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In the

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

No. 476

COWBOY PINK WILLIAMS, State Treasurer, State of Oklahoma; A. F. SHAW, State Auditor, State of Oklahoma; J. D. DUNN, LAWTON LEININGER and MIKE CONNERS, comprising the Oklahoma Tax Commission, State of Oklahoma; and HASKELL PUGH, MATHER M. EAKES and FRANK RENEAU, comprising the State Election Board, State of Oklahoma,

Appellants,

VERSUS

HARRY R. MOSS,
Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

JURISDICTIONAL STATEMENT

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August, 1963.

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In the

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OCTOBER TERM, 1963

No. .....

COWBOY PINK WILLIAMS, State Treasurer, State of Oklahoma; A. F. SHAW, State Auditor, State of Oklahoma; J. D. DUNN, LAWTON LEININGER and MIKE CONNERS, comprising the Oklahoma Tax Commission, State of Oklahoma; and HASKELL PUGH, MATHER M. EAKES and FRANK RENEAU, comprising the State Election Board, State of Oklahoma,

Appellants,

VERSUS

HARRY R. MOSS,
Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

JURISDICTIONAL STATEMENT

Appellants appeal from the Final Judgment of a three-judge court convened in the United States District Court for the Western District of Oklahoma, filed and entered on July 17, 1963. The judgment granted a permanent injunction against the State Election Board of Oklahoma and commanded a reapportionment of both houses of the Okla-

homa Legislature according to a court devised formula. Carrying forward into the final decree principles enunciated in previous interlocutory decrees, the permanent injunction effectively invalidates:

(a) Certain portions of the Oklahoma Constitution relating to legislative apportionment.

(b) All implementing reapportionment statutes enacted in 1961 and prior years.

(c) The reapportionment acts of the 29th (1963) Oklahoma Legislature, when and if they became effective on or about September 12, 1963.

to the extent that the Constitution and such laws differ from the apportionment formula embodied in the Final Judgment.

Under terms of the injunction, the State Election Board is "ordered and directed to accept filings and conduct elections" in accordance with the July 17, 1963, decree, and pursuant to other provisions of Oklahoma law "not inconsistent herewith."

OPINIONS BELOW

(a) Final Judgment here sought to be reviewed:

Appendix I—Memorandum of Decision and Final Judgment, with Appendix A, July 17, 1963.

(b) Earlier reported opinions in the same case:

Moss v. *Burkhart*, D.C. W.D. Okla. (1962), 207 F. Supp. 885.

1. Memorandum of Facts and Conclusions of Law and Interlocutory Decree on Motion for Interlocutory Relief. April 30, 1962. 207 F. Supp. at 887.
2. Interlocutory Decree. June 19, 1962. 207 F. Supp. at 897.
3. Further Statement of Facts and Law on the Merits, relating to Interlocutory Decree. June 19, 1962. 207 F. Supp. at 892.
4. Decree of July 31, 1962, filed August 3, 1962. 207 F. Supp. at 898.

GROUNDS FOR APPELLATE JURISDICTION

(a) Nature of the Proceeding

This is an action to enjoin enforcement of the Constitution and Statutes of Oklahoma relating to the apportionment of the Oklahoma State Senate and House of Representatives. Plaintiff claimed that by reason of failure of the Legislature periodically to reapportion itself as required by the State Constitution, and by reason of population shifts, the vote of plaintiff and others of his class for legislative officers had become grossly diluted. Such legislative malapportionment, plaintiff claimed, resulted in deprivation, under state law, of civil rights guaranteed by the Equal Protection Clause of Amendment XIV to the United States Constitution.

The claimed violation of 42 U.S.C. Sec. 1983 (Act of April 20, 1871, C. 22; 17 Stat. 13) conferred jurisdiction upon the United States District Court under 28 U.S.C. Sec. 1343. A three-judge court was convened pursuant to 28 U.S.C. Secs. 2281 and 2284.

The court assumed jurisdiction of the federal constitutional question thus raised, and in its interlocutory decree of June 19, 1962, determined the existing statutes of Oklahoma relative to apportionment of both houses of the Oklahoma Legislature to be "invidiously discriminatory against plaintiff and his class; hence null and void" (207 F. Supp. at 898).

In a further order of August 3, 1962, the District Court withheld final judicial action to afford the 29th (1963) Oklahoma Legislature an opportunity to reapportion itself (207 F. Supp. at 898). In doing so, the court offered "guidelines" for reapportionment which if followed, would, in the view of the District Court, meet the required standards of equal protection of laws (207 F. Supp. at 898-899).

The guidelines proposed would discard as invidious that part of Article V, Section 10, Oklahoma Constitution, limiting to seven the maximum number of members of the House of Representatives elected from any single county (207 F. Supp. at 898). They would also discard that part of Article V, Section 9(a) increasing the size of the State Senate by assigning additional Senators to more populous counties (207 F. Supp. at 899).

The 29th Legislature enacted separate bills in 1963 for reapportionment of the respective houses of the Legislature. These Acts followed the Oklahoma Constitution, rather than the court's guidelines, where the two were in conflict.

Thereupon, the District Court entered its Final Judgment, embodying a complete reapportionment of each of the two houses of the Oklahoma Legislature; and enjoined

conduct of future elections for legislative offices except in accordance with that apportionment, and state law not inconsistent therewith.

In this case, the Civil Rights Act was directly invoked to redress a claimed deprivation of equal protection of laws by reason of mal-apportionment of both houses of the State Legislature. State apportionment laws were sought to be enjoined as invidiously discriminatory. On final hearing, a permanent injunction was issued which was designed to effect a reapportionment of both houses of the Legislature.

(b) Dates of Judgment and Appeal

The Final Judgment here sought to be reviewed was made and entered herein on July 17, 1963.

Notice of appeal was filed by these Appellants in the United States District Court for the Western District of Oklahoma on July 22, 1963.

(c) Statute Conferring Jurisdiction Upon the Supreme Court

This appeal is taken pursuant to the provisions of the Act of June 25, 1948, c. 646, 62 Stat. 926, 28 U.S.C. Sec. 1253. This is an appeal from an order granting, after hearing, a permanent injunction in a civil action required by law to be heard and determined by a District Court of three judges.

(d) Cases Believed to Sustain Jurisdiction of the Supreme Court in this Appeal

Appellant submits that the following cases decided by this Court sustain its jurisdiction of this appeal. *Baker* v. *Carr*, 369 U.S. 186; *Gray* v. *Sanders*, 370 U.S. 921; *Florida Lime & Avocado Growers. Inc.* v. *Jacobsen*, 362 U.S. 73; *Kesler* v. *Dept. of Public Safety*, 369 U.S. 153; *Palmetto Fire Ins. Co.* v. *Conn.*, 272 U.S. 295.

(e) State Statutes Involved

The following provisions of the Constitution and Statutes of Oklahoma are involved in this appeal. Due to their length, the full text thereof is set out herein as Appendix II, as follows:

Appendix II:

(a) Article V, Sections 1 and 2, Constitution of Oklahoma. Vol. 1, p. 62, Oklahoma Statutes, 1961.

(b) Article V, Sections 9, 9(a), 9(b), 10 and 11, Constitution of Oklahoma. Vol. 1, pp. 64-66, Oklahoma Statutes, 1961.

(c) Title 14, Oklahoma Statutes, 1961, Sections 9-14 incl., 21, 22, 31-33 incl., 41-43 incl. 45.1-45.4 incl., 51-55 incl., 61-63 incl., 71, 72, 97-100 incl. Vol. 1, pp. 1042-1050, Oklahoma Statutes, 1961.

(d) House Bill No. 586, 29th (1963) Oklahoma Legislature. Not officially reported.

(e) Senate Joint Resolution No. 8, 29th (1963) Oklahoma Legislature. Not officially reported.

QUESTIONS PRESENTED BY THE APPEAL

The following questions, all set out in the Notice of Appeal, or fairly comprised in questions there stated, are presented by this appeal:

(1) Did the District Court have the power to reapportion the Oklahoma Legislature by judicial decree; and to permanently enjoin elections for legislative offices except in accordance with an apportionment prescribed by it?

(2) May a Federal Court intervene to reapportion a State Legislature in the name of preserving to citizens equal protection of laws, when a remedy is available by Initiative and Referendum, guaranteed by the State Constitution?

(3) Does any portion of the Constitution or laws of Oklahoma [including apportionment laws of the 29th (1963) Legislature] invidiously discriminate against any citizen or class of citizens, in voting strength or weight of votes, so as to deny them equal protection of laws, in violation of the XIV Amendment to the United States Constitution?

Under the facts of this case, answer to this question necessarily will raise the following subsidiary questions:

(a) Does the Equal Protection Clause require that both houses of a bi-cameral State Legislature be apportioned solely upon the principle of substantial numeral equality of population among districts?

(b) Does the Oklahoma Constitution, and apportionment laws enacted pursuant thereto, apportioning each house of a bi-cameral Legislature primarily upon the basis of population, but with

certain limitations which indirectly recognize other factors, result in such invidious discrimination as to deprive citizens of equal protection of laws?

(c) Does a legislative apportionment which provides for weighing of votes in allocation of legislative offices by limiting the maximum number of Representatives allowed any county, or by requiring progressively greater population per Representative as the number of Representatives allocated a county increases, result in such invidious discrimination as to deprive citizens of equal protection of laws?

(4) Does the Final Judgment of the District Court comply with all provisions of the Constitution and laws of Oklahoma governing legislative apportionment, except for such departure as is absolutely necessary to guarantee citizens equal protection of laws?

Answer to this question necessarily will raise the following subsidiary questions:

(a) May a Federal Court fashion and enforce by an injunction an "ideal" apportionment formula, disregarding state law, which formula represents the court's own judgment of maximum numerical equality among districts?

(b) May a Federal Court, by injunction, create new representative districts for legislative offices, which districts bear no relation to state statutes or existing districts.

(c) May the court by injunction, bring to an end terms of office of legislative officers before the expiration thereof under existing state law; and create new terms, and designate the length and

effective date thereof, disregarding existing state law?

(d) May the court eliminate by judicial construction provisions of a State Constitution relating to legislative apportionment on the ground alone that to do so would permit greater equality of population among districts?

STATEMENT OF THE CASE

Plaintiff, a resident of the most populous county in Oklahoma, filed this class action challenging the constitutionality of the Constitution and laws of Oklahoma governing apportionment of both houses of the Legislature. He alleged that under existing apportionment laws, his vote for elected members of the Legislature amounts to less than one-tenth of the vote of citizens of other districts. The gross disparity in population of districts electing State Senators and Representatives, plaintiff claimed, was invidiously discriminatory against plaintiff and his class; and deprived him of equal protection of laws guaranteed by the XIV Amendment to the United States Constitution.

These facts, together with the persistent refusal of the Legislature since 1910 to reapportion itself as it is commanded to do by the Oklahoma Constitution, justify, under plaintiff's claim, Federal Court intervention to redress deprivation of his constitutional rights.

All parties tacitly conceded that the apportionment statutes of Oklahoma then existing did not comply with the formula for apportionment set out in the Oklahoma Constitution; and that the departure favored sparsely settled

rural areas at the expense of urban areas. The Oklahoma Supreme Court had repeatedly adjudged those laws to be in noncompliance with the requirements of the Oklahoma Constitution; but the political nature of the question, together with the fact that reapportionment is essentially a legislative function, had caused the Oklahoma Court to withhold any attempt to effect reapportionment by judicial decree. *Jones* v. *Freeman* (Okla. 1944), 193 Okla. 554, 146 P.2d 564; *Jones* v. *Winters* (Okla. 1961), 369 P.2d 135; cf. *Radford* v. *Gary*, D.C. Okla. 1956, 145 F. Supp. 541.

The cause was held in abeyance until this Court had confirmed federal jurisdiction in cases of this type, and the existence of a justiciable controversy cognizable by the Federal Court. *Baker* v. *Carr*, 369 U.S. 186, 82 S.Ct. 691, 7 L. Ed.2d 663.

By an Interlocutory Decree, the District Court declared existing apportionment of both houses of the Oklahoma Legislature to be "grossly and egregiously disproportionate, and without rational basis or justification in law or fact" (207 F. Supp. at 894). For practical purposes, this judgment was based alone upon numerical disparity in census population among representative districts, or in population per Representative. The court cited the extreme variance of 14-1 in weight of votes for members of the House of Representatives, and an extreme of 26-1 in weight of votes for State Senators; that 26 per cent of the State's population elect a majority of the House of Representatives; and that nine of 44 Senators represent 52 per cent of the State's population (207 F. Supp. at 893).

Although conceding that mere numerical disparity in voting strength does not by itself establish unconstitutional deprivation of voting rights (207 F. Supp. at 891, 893), the District Court concluded that the disparity shown here was so great as to be a *prima facie* showing of invidiousness; and that no rational basis was brought forward to justify the inequality (207 F. Supp. at 891, 893).

In a supplemental opinion, the District Court refused to halt or interfere with the 1962 elections for legislative officers, then in progress; thus postponing any effective affirmative relief until 1964 at the earliest (207 F. Supp. at 898). Consideration of possible remedy also was deferred to afford the 29th (1963) Oklahoma Legislature an opportunity to enact reapportionment laws consonant with the federal constitutional guaranty of equal protection. Guidelines were offered to serve as a pattern for legislative reapportionment; and the court made it clear that only a reapportionment law which followed those guidelines would be deemed to meet the required standard of equal protection of laws.

The proffered guidelines necessarily invalidated certain provisions of the Oklahoma Constitution relating to apportionment, in addition to the statutory provisions earlier cast aside. These were as follows:

First, the proviso contained in Article V, Section 10, Oklahoma Constitution that "no county shall ever take part in the election of more than seven representatives . . ." expressly was declared invidiously discriminatory against citizens of populous counties, and unconstitutional (207 F.

Supp. at 898-899). It was directed that Oklahoma County be allotted 19 seats and Tulsa County 15 seats in the House of Representatives under the general provision of Article 5, Section 10(c) allotting one legislative seat for each ratio of 1 per cent of the State's population. Under this guideline, apportionment of the House of Representatives would be solely upon population, subject to only minor restrictions, the principal one being the allotment of the first Representative to any county having as much as one-half ratio under Article V, Section 10(d).

Second, the clause in Article V, Section 9(a), Oklahoma Constitution, relating to allotment of additional Senators above the original 44 was eliminated. The clause provided that ". . . in the event any county shall be entitled to three or more senators . . . such additional senator or senators shall be given such county in addition to the forty-four senators and the whole number to that extent." This clause was not found or declared to be invidiously discriminatory, but was eliminated as a matter of constitutional interpretation, the court stating that an "irreconcilable incongruity" rose in attempting to apply it. The Oklahoma Supreme Court had noticed no such incongruity, and had explained the purpose of the clause as affording representation to more populous counties, while maintaining relative stability of senatorial districts in the State as a whole. *Latting* v. *Cordell* (1946), 197 Okla. 369, 172 P.2d 397. The necessary effect of the District Court's construction thereof was to eliminate the clause altogether. Thus, the court's guideline called for 44 State Senators under Article V, Section 9(a), apportioned strictly according to popula-

tion, subject only to the qualification that county lines be honored in formation of senatorial districts under Article V, Section 9(b).

Subsequent to the interlocutory decrees described above, the 29th (1963) Oklahoma Legislature enacted separate laws for reapportionment of the State Senate and House of Representatives, which are HB-586 and SJR-8, appended hereto. Each bill passed both houses and was signed by the Governor. Since neither contained an emergency clause to become effective immediately, the effective date thereof, as provided in the Oklahoma Constitution, is 90 days after adjournment of the Legislature, or September 12, 1963.

HB-586 apportioned the House of Representatives for the forthcoming four biennial legislative sessions commencing in 1965. The only significant difference between the Act and the District Court's guidelines was in application of the seven member limit contained in Article V, Section 10(d), Oklahoma Constitution. As to this provision, the Legislature followed the Constitution, not the court. Notwithstanding the District Court had held this provision of the Oklahoma Constitution invidiously discriminatory, and void, HB-586 limited Oklahoma County and Tulsa County to seven Representatives each, instead of 19 and 15 respectively, to which they would be entitled except for the questioned proviso.

The only other particular in which HB-586 was questioned, under State or Federal Constitutions, was in assignment of floatorial Representatives. A "float" is a seat in the

House of Representatives assigned a county for one or more individual biennial legislative sessions in the decade, pursuant to Article V, Section 10(e), Oklahoma Constitution. Adjustment is thus made for a county's excess population above the ratio required for a full Representative by allotment of a Representative for one legislative session for each fractional one-fifth ratio in excess population.

Under HB-586, floatorial Representatives were assigned a county for each one-fifth ratio over the minimum one-half ratio of population necessary to qualify for the first Representative under Article V, Section 10(d); rather than for each one-fifth ratio over the first full ratio of population. This interpretation of Article V, Section 10(e) resulted in some benefit to rural counties.

Population per Representative under HB-586 varied among districts from 11,700 to 62,800; while if apportionment were accomplished without regard to the seven member limit for any one county, the variation would have been from 11,700 to 36,900.

SJR-8 apportioned the State into forty-seven senatorial districts, each to elect one Senator. Oklahoma County was divided into four districts, and Tulsa County into three. The balance of the State was divided into 40 districts, each comprising from one to four counties. Population per Senator among the districts created ranged from 24,393 to 115,346.

Again, the principal departure from the guidelines suggested by the District Court was in following that portion of the Oklahoma Constitution which the District Court had

stricken down. In SJR-8 the Legislature invoked the extra Senator clause of Article V, Section 9(a), Oklahoma Constitution, by allotting four Senators to Oklahoma County and three to Tulsa County, concededly the only counties "entitled to three or more Senators." Under this apportionment, Tulsa and Oklahoma Counties would contain greater population per Senator than other districts, and it was apparent that the Legislature, in applying the extra Senator clause, required greater population for each extra Senator than in allocating the original 44. A standard of "permanent population," rather than census population, was created by the Act for purposes of making these allocations.

The Legislature also submitted for vote of the people an amendment to the Oklahoma Constitution, SJR-4, embodying an entirely new apportionment formula. If approved at the run-off primary election in May, 1964, the amendment would create 48 senatorial districts, each electing one Senator, consisting of 19 one-county districts and 29 two-county districts. The districts would range in population from some 15,000 to 440,000. The formula for the House of Representatives would grant at least one Representative to each county; and would require progressively more population per Representative as the number of Representatives allotted any county increases.

At a supplemental hearing on March 8, 1963, the 1963 apportionment acts, HB-586 and SJR-8, were proffered the District Court as a legislatively accomplished apportionment in compliance with the Oklahoma Constitution

yet meeting required standards of equal protection of laws. Upon consideration, the District Court disagreed, and entered its Final Judgment of July 17, 1963, which is the judgment here for review, and promulgated its supplemental opinion in connection therewith.

The opinion pointed out that any effort to adjudicate the constitutionality of legislation not yet in effect would be premature. But in order to determine whether further judicial remedy should be afforded, the 1963 apportionment laws must be weighed against the constitutional guaranty of equal protection of laws.

Again, largely upon the basis of numbers alone, the court found the disparity in population among legislative representative districts therein provided was without any rational basis whatever, both as to the State Senate and the House of Representatives. For that reason, the court found that both HB-586 and SJR-8, if and when effective, would be substantially as invidiously discriminatory as previous apportionment statutes earlier stricken down as unconstitutional. In passing, it was noted that the constitutional amendments for apportionment proposed by SJR-4, although doubtful of passage, would be even worse in the gross disparity in population among legislative districts.

The District Court announced its reluctant decision to apportion the Oklahoma Legislature by judicial decree, stating significantly, that "if apportionment is to be our lot, we should not stop short of the ideal."

The Order of Reapportionment which followed, contained the following principal elements:

SENATE

(a) The State is divided into 44 districts, each electing one Senator. Eight are allotted to Oklahoma County, and seven to Tulsa County. Thus the extra Senator clause of Article V, Section 9(a) is eliminated.

(b) Until the Legislature hereafter creates boundaries, Senators from all districts within one county shall run at large in the county.

(c) All terms of Senators presently serving are declared ended after the 1964 election. New Senators from all districts will be elected in 1964. Half will serve a term of two years; the other half a term of four years. Thereafter, terms of office of Senators shall be four years as presently established by the Oklahoma Constitution.

HOUSE OF REPRESENTATIVES

(a) Representatives are allotted each county for the remaining four decennial legislative periods in the decade, 1962-1972, in accordance with Article V, Section 10 of the Constitution, except the seven member limit of Section 10(d) is discarded, and Oklahoma County and Tulsa County are allotted 19 and 15 Representatives respectively.

(b) Floatorial Representatives are calculated upon the basis of fractional population above a full ratio, rather than above a half ratio.

(c) Until the Legislature shall create districts within any county, all Representatives allotted the county shall run at large.

The State Election Board, and all acting under its authority, are by the Order directed to conduct elections

for legislative offices in accordance with the apportionment contained in the Order, and other applicable laws; and restrained from conducting such elections in any manner inconsistent with the Order and applicable laws not inconsistent therewith.

This appeal was perfected from the Final Judgment of the District Court thus reapportioning the Oklahoma Legislature, and commanding that elections be conducted only in accordance with that judicial decree.

REASONS FOR PLENARY CONSIDERATION

The future composition of the Oklahoma Legislature, both the State Senate and the House of Representatives, awaits the outcome of this appeal.

The Oklahoma Legislature, performing its legislative duty under the Oklahoma Constitution, has enacted laws for apportionment of the Legislature for the balance of the current legislative decennial period. In these laws the Legislature has followed substantially the provisions of the Oklahoma Constitution governing legislative apportionment.

The United States District Court, upon strength of constitutional principles forecast by *Baker* v. *Carr*, *supra*, promulgated a significantly different reapportionment of both houses of the Oklahoma Legislature, and issued an injunctive decree designed to enforce compliance therewith.

The major differences between the legislative reapportionment and the judicial reapportionment stem from the court's determination that certain provisions of the Okla-

homa Constitution, and implementing statutes, are invidiously discriminatory against classes of citizens in weight of votes, and thus deny them equal protection of laws.

Thus, federal constitutional questions of major proportions are placed squarely in issue by the final judgment and permanent injunction issued by the District Court. A number of appeals earlier had been tendered this Court during the interlocutory stages of this litigation. All were dismissed. *Price* v. *Moss* (two cases), — U.S. —, 83 S.Ct. 1687; *Baldwin* v. *Moss*, — U.S. —, 83 S.Ct. 1687. There is no longer any question of the finality of the judgment of the District Court, or whether the cause now is appealable under 28 U.S.C. Sec. 1253.

Probable jurisdiction already has been noted in other cases raising the same or substantially similar constitutional issues involving various aspects of apportionment of Legislatures of other states. *Maryland Committee for Fair Representation* v. *Tawes* (No. 554), — U.S. —, 83 S.Ct. 1691; *W.M.C.A.* v. *Simon* (No. 460), — U.S. —, 83 S.Ct. 1691; *Reynolds* v. *Sims* (No. 508), *Van* v. *Frink* (No. 540), *McConnell* v. *Frink* (No. 610) (consolidated), — U.S. —, 83 S.Ct. 1692.

Apportionment litigation by its very nature calls for individual review and decision as to each State. The Constitution and laws of each State governing apportionment of State Legislatures, when challenged, must be tested individually against the standard of equal protection guaranteed by the United States Constitution. There is no occasion to consider constitutionality of the apportionment

laws of any one State piecemeal or prematurely. Appellate review properly awaits final decision in a lower court of lawful jurisdiction. In this case, final adjudication of the matter occurred with the July 17, 1963, judgment of the District Court. Judgment was that Oklahoma apportionment laws were invidiously discriminatory and unconstitutional; and portions of the Oklahoma Constitution and much of the statutory laws on the subject were declared null and void. Unless the permanent injunction is set aside or modified on appeal in this Court, the judicially fashioned apportionment will govern future elections for legislative offices in Oklahoma. The cause now is in proper posture for effective and final review by this Court.

This appeal will necessitate decision of numerous questions posed in *Baker* v. *Carr, supra*, but as yet unanswered. Indeed, this cause will, in virtually every aspect of the reapportionment problem, test the outer limits of the *Baker* v. *Carr* doctrine.

In the matter of available relief, this appeal presents not only the question of whether affirmative relief judicial in character is to be made available, but the scope and form of permissible judicial action. May a District Court enjoin state officials, upon pain of punishment for contempt, from conducting elections except in accordance for a court-fashioned reapportionment? If so, may the court create new Representative districts, provide election at large until districts are legislatively fixed, cancel existing terms of office, create new terms of office and otherwise amend or at least temporarily suspend operation of the State Constitution for

such time as may be needed to put the judicially conceived apportionment scheme in operation? This appeal brings these questions up for decision.

This appeal also presents squarely an issue apparently not yet before this Court, but deemed important by MR. JUSTICE CLARK in his concurring opinion in *Baker* v. *Carr*. Unlike Tennessee, Oklahoma affords its people protection from political injustice by a minority against a majority by means of initiative and referendum. This legislative device always has been resorted to with great frequency in Oklahoma. It is not often successful, as is to be expected of such a clumsy, trial-and-error method of legislation by direct action. It has been utilized several times in the field of apportionment, but as yet without success at the polls. This appeal will determine whether the majority must resort to their own votes to achieve the political equality they seek, rather than invoke the assistance of the Federal Courts.

Finally, this appeal necessarily will trace once and for all the limits of the doctrine of "invidious discrimination" announced in *Baker* v. *Carr*. Oklahoma's Constitution, like that of Tennessee, requires apportionment principally according to population, but with certain qualifications. The qualifications recognize, directly or indirectly, factors other than population, which principle is accomplished by weighing votes in favor of more sparsely populated areas. The District Court simply eliminated most of these qualifications in the name of equal protection, and ordered apportionment of both houses substantially according to population alone. Thus, this cause presents squarely the issue

whether the equal protection clause inexorably demands that both houses of a bi-cameral Legislature be apportioned upon the principle alone of substantial numerical equality of census population among districts. If it does not, this appeal then will serve to determine where along the scale of numerical disparity rationality ceases and invidiousness commences in applying factors other than census population in apportionment of state legislative offices; and the extent to which a State validly may weight votes in such an apportionment.

The appeal presents substantial constitutional questions involving construction and application of the Equal Protection Clause of the XIV Amendment to the United States Constitution; and fully justifies plenary consideration by this Court, including briefs on the merits and oral argument.

Respectfully submitted,

CHARLES NESBITT,
Attorney General of Oklahoma,
State Capitol,
Oklahoma City, Oklahoma,
Counsel for Appellants.

August, 1963.

APPENDIX I

MEMORANDUM OF DECISION AND FINAL JUDGMENT

This matter came on for further hearing on March 8, 1963, pursuant to Order of August 3, 1962. The plaintiff, Moss, appeared by his attorney, Mr. Sid White. Mr. Norman Reynolds, who represented the Governor when these proceedings were commenced, appeared pro se and with Mr. G. T. Spradling, attorney for the Council of Democratic Neighborhood Clubs. Mr. Delmer Stagner, who represented Mr. William Burkhart, State Treasurer, when these proceedings were commenced, appeared for Mr. Burkhart, individually, as an intervening plaintiff. Mr. Charles Nesbitt, Attorney General, who has succeeded to office since the August hearing, and his First Assistant Mr. W. J. Monroe, appeared representing the present State Treasurer, Cowboy "Pink" Williams, substitute defendant for Mr. Burkhart; Mr. S. F. Shaw, State Auditor, substitute defendant for Mr. Andy Anderson; the members of the Oklahoma Tax Commission, who were original defendants and now compose the Commission; and, the present members of the State Election Board, substitute defendants for the original defendant members. The present Governor of the State, who succeeded to his office since the commencement of the proceedings, did not appear in person or by counsel. His predecessor having been made a party, and having participated in the proceedings, the present Governor is automatically substituted as a party, upon succession to the office. The intervening State Senators and the parties intervening as Oklahomans for Local Government, appeared by their Attorneys, Mr. James Rinehart, Senator Walt Allen, Mr. Leon Hirsh, and Mr. James C. Harkin. Mr. Frank Carter appeared for the Oklahoma Farm Bureau and Mr. Lewis H. Munn. Mr. Richard McKee was allowed

to intervene for Mrs. Phyllis P. Brodski, a taxpayer and registered voter. Mr. Tom Tate appeared, as a member of the House of Representatives, and filed a Memorandum. Mr. U. Simpson Tate appeared as attorney for A. Willie James, J. W. Simmons, J. W. Tyler and Amos T. Hall, as interested parties, and has filed Requested Findings of Fact and Conclusions of Law. The Congress of Parents and Teachers, and The League of Women Voters filed separate briefs amicus curiae, in support of their respective plans for reapportionment.

Pursuant to the August 1962 hearing, on Motion of the intervening Senators and Oklahomans for Local Government, to alter and amend the interlocutory decree of June 19, 1962, the Court did clarify the decree to apply to the elections of 1964 and all future elections following the 1962 election, which was then in being. Upon consideration of the remedies urged upon the Court at the August hearing, for redress of the deprivation or impairment of voting rights, vouchsafed to the plaintiff and his class by the Fourteenth Amendment, the Court decided to defer further action to the 1963 general session of the Oklahoma Legislature, to be convened early in the following January. Further hearing on the remedies to be afforded the aggrieved class, was accordingly passed until March 8, 1963.

In the extraordinary circumstances, it was deemed appropriate to promulgate some guidelines or standards which, in the judgment of the Court, would insure compliance with the equal protection of the laws, with respect to the exercise of sufferage rights for the election of members of both branches of the Oklahoma Legislature. Consistent with our previously declared fundamental principle of apportionment based on substantial numerical equality, as firmly enunciated in the Oklahoma Constitution, and our concept of the requirements of the Fourteenth Amendment, we stated that the House of Representatives should

be reapportioned in accordance with the mandate of the Oklahoma Constitution, except as to the ceilings established in Section 10(d), Article V for populous counties. As to that, we were of the view that the arbitrary restrictions thus imposed, was invidiously discriminatory against the plaintiff and his class; hence, constitutionally intolerable. We left the matter of forming Legislative Districts among the counties, for both the House and the Senate, to the discretion of the Legislature, subject only to the requirement of the Oklahoma Constitution and the Fourteenth Amendment with respect to substantial numerical equality and contiguity, "* * * so that each voter of the State will have approximately the same power and influence in electing members of the two houses of the Legislature and in passing legislation, as every other voter." Jones v. Freeman, 146 P.2d 564, 567. In that respect, we recommended the Proposed Order And Decree, filed on July 30, 1962, by the then Acting Attorney General, as a practical and helpful guide to the orderly reapportionment for both Houses. See: Price v. Moss; Oklahoma Farm Bureau v. Moss, 207 F. Supp. 895; Review Denied, Nos. 688-689 (June 11, 1963) 31 L.W. 3405.

Having thus invoked the spirit and intent of the Oklahoma Constitution, as a reliable guide for compliance with the Fourteenth Amendment, and having been assured by the leaders of the Oklahoma Legislature, in open Court, that once their constitutional duty was made clear, it would be discharged with befitting honor and fidelity, we withheld any redress for deprivation of the plaintiffs' rights, by the prolonged malapportionment. We were also mindful of the pendency of an Initiative Petition, providing for a Constitutional Commission, to reapportion the Legislature in accordance with the Oklahoma Constitution, and the prospects of its submission to the people at the November election.

At the November election, the Initiative Petition did receive an affirmative majority of the total votes cast on the Petition (335,045 to 273,287, or a majority of 61,758). The then Governor proclaimed that it had become law. The Commission created thereunder was constituted, and proceeded to reapportion both houses of the Legislature, in accordance with the Oklahoma Constitution, except only to the extent necessary to comply with the guidelines set out in the August 3, 1962 Order of this Court.

The intervening Senators filed in the Oklahoma Supreme Court, an original action to annul the Initiative Petition, on the ground that it had not received the constitutionally required affirmative vote, and to litigate the identical constitutional issues heretofore presented for decision in this proceedings. On petition of the plaintiff and his class, to enjoin the intervenors from prosecuting the original proceedings in the Supreme Court of Oklahoma, we restrained the parties from relitigating the constitutional questions presented here, but deferred to the Oklahoma Court the resolution of the question whether the Initiative Petition had become the law of the State. See: Memorandum Decision Granting Restraining Order, attached as Appendix "A"; Review Denied, Baldwin v. Moss, No. 864 (June 11, 1963), 31 L.W. 3405. In the State proceedings, the Supreme Court determined that the Initiative Petition "failed of adoption for lack of sufficiency of affirmative votes." Allen v. Burkhart, 377 P.2d 821.

When this cause came on for hearing on March 8, 1963, for further consideration of the remedy to be afforded to the plaintiff and his class, the intervening Senators offered Oklahoma Senate Resolution No. 8 and Enrolled House Bill No. 586, and urged them upon the Court, as an appropriate and adequate remedy for the malapportionment of the Oklahoma Legislature under previously existing legislation. They took the position that the legislation complied

with the Oklahoma Constitution and with the equal protection clause of the Fourteenth Amendment. The plaintiff and allied intervenors took the position that the legislation was wholly inadequate to achieve constitutional reapportionment, and to provide the remedy for impairment of their voting rights. The League Of Women Voters and The Congress Of Parents And Teachers offered a plan for reapportionment of both Houses of the Legislature, in accordance with a "standard deviation formula," and testimony in support of it. The plan provides a simple and facile method for reapportioning the Legislature on the basis of population.

The legislation urged upon us by the intervening Senators as an appropriate remedy, has passed both Houses of the Legislature, and has been signed by the Governor, but no effort was made to attach the emergency clause. Article V, Section 58 of the Oklahoma Constitution provides that such legislation does not become effective until ninety (90) days after the adjournment of the legislative session at which the legislation was passed, i.e., June 14, 1963. Moreover, under Article V, Sections 1 and 4 of the Oklahoma Constitution, the legislation may be referred to a vote of the people, on petition of five per cent (5%) of the voters, filed with the Secretary of State, within ninety (90) days after the final adjournment of the session, and before the legislation becomes effective.

Since the legislation is not presently effective and may never be effective, it cannot presently affect the rights of the complaining parties, and they, therefore, have no standing to challenge its constitutionality. In this posture, it would be inappropriate for this Court to adjudge the purely hypothetical constitutional question. See: Coffman v. Breeze, 323 U.S. 316; Federation of Labor v. McAdory, 325 U.S. 450; Rescue Army v. Municipal Court of Los

Angeles, 331 U.S. 549; and City of Oklahoma City v. Dulick (10 CA), __ F.2d __.

But even so, we are immediately concerned with an appropriate remedy for the deprivation of a civil right, and while time is not of the essence of the right, it is, to be sure, an important consideration, if relief is to be granted in the foreseeable future. It is important to note that candidates for legislative office, the term of which expires in November, 1964, must file notification and declaration of candidacy with the Election Board during the filing period, beginning the fourth Monday in February, before the day fixed by law for the regular primary election in 1964. See: 26 O.S. §163. As the matter now stands, the present legislative apportionment laws have been declared prospectively null and void, and if the recent legislation should not become effective by reason of the inherent contingencies, there can be no valid election for the legislative offices involved. Enrolled House Bill No. 586 and Senate Resolution No. 8, having been passed and signed by the Governor, cannot be recalled for amendment. If they should be referred to referendum, they must be voted up or down—they either become the law as enacted, or nullified by a vote of the people.

In these circumstances, it becomes manifestly important to settle the apportionment law applicable to the forthcoming election, both in the interest of the plaintiff-electors and those who are to seek legislative office. We are thus brought to the necessity of examining the inchoate legislation, for the purpose of deciding whether, as applicable law, it would afford adequate redress for the deprivation of a civil right. We have examined the legislation with care, and have come to the conclusion that it does not afford the remedy which the Federal Constitution commands.

The House Bill purports to comply with the Oklahoma Constitution. It does not purport to comply with the guide-

lines set out in the August 3, 1962 Order of this Court. But, the legislation is not, for that reason, an unacceptable remedy for invidious discrimination. The Fourteenth Amendment requires precise equality among electors for state-wide offices, or for an office within an electorial district. See: Gray v. Sanders, 372 U.S. 368. But, it does not demand precise political equality as between qualified voters, for the election of legislative representatives from different electorial districts. We know that there is "room for weighting" and "rough accomodation," within the framework of the equal protection clause of the Fourteenth Amendment. Baker v. Carr, 369 U.S. 186; and Norvell v. Illinois, ___ U.S. ___ (Oct. 1962). Our guidelines were not promulgated as an inexerable rule or guide for the achievement of the equal protection of the laws, in the apportionment of the Oklahoma Legislature. We recognized then, as indeed we do now, that the equal protection clause requires only a rational basis for disparity in voting strength, for legislative representation. Throughout this litigation, however, we have proceeded upon the premise that the gross disparity and deliberate refusal to reapportion, in accordance with the plain mandate of the Oklahoma Constitution, i.e., See: Radford v. Gary, 145 F.Supp 541, is prima facie evidence of a hostile disposition to discriminate. And, we have called upon those who would support the disparity to show a rational basis for it.

The vice of this most recent legislation lies in the absence of any rational basis for the manifest disparity. In practical effect, it provides little or no relief for malapportionment under antecedent laws. Under this legislation, the Representative Districts vary in population from 11,700 to 62,800. We think it more than coincidental that whereas, under antecedent laws, 29 per cent of the people of Oklahoma could elect a majority of the lower House, under the prospective House Bill, 30.2 per cent can elect a majority of the lower House in the second session of this

decennial; 31.2 per cent can elect a majority in the third session; 33.5 per cent in the fourth session; and, in the fifth session, 28.5 per cent may elect the majority. Thus, in this decade, an average of 31 per cent of the people would elect a majority of the lower house, i.e., a 2 per cent increase over the antecedent discriminatory laws. This result is brought about by adherence to the arbitrary ceilings on the number of representatives to be elected from the most populous counties, under Section 10(d), and through skillful manipulation of the "floats," provided in Section 10(e), Article V, of the Oklahoma Constitution.

The same invidious purpose is even more manifest in Senate Resolution No. 8, where the disparities between districts run the scale from 115,300 to 24,400, or a ratio of 4.73 to 1. No rational basis was shown for this disparity. The Resolution does not purport to comply with either the Oklahoma Constitution, or with this Court's guidelines for compliance with the equal protection clause of the Fourteenth Amendment. The Oklahoma Constitution specifically provides that each of the "* * * [electorial] districts shall contain as near as may be an equal number of inhabitants, such population to be ascertained by the next preceding Federal census, or in such manner as the Legislature may direct." Article V, Section 9(a). Presuming to act under color of the latter clause of this constitutional provision, the Oklahoma Legislature in Senate Resolution No. 8 undertook to depart from the decennial Federal census, for what it called the "permanent population standard," for determining representation. In the first place, a double standard was used to arrive at the legislated apportionment, in that the "permanent population standard" was used in Oklahoma and Tulsa Counties, while the Federal census was used elsewhere. In the second place, the proof shows that the apportionment in Oklahoma and Tulsa Counties is not truly based upon the erected standard. There was nothing

to indicate, or from which it can be said, that the classification rests upon any rational basis. Such gross disparity cannot be justified by "historical precedents," as in Maryland Committee For Fair Representation v. Tawes, 184 A.2d 715. Nor, by traditional legislative autonomy of counties, as in Sobel v. Adams, 208 F.Supp 316. Nor, by the political, social and economic heterogeneity, recognized in Lisco v. McNichols, 208 F.Supp 471. We think our situation more nearly like Sims v. Frink, 208 F.Supp 431. From the proof before us, it is manifest that the legislative apportionment, under Senate Resolution No. 8, is a patch-work of political maneuvering and manipulation, to perpetuate the same invidious apportionment which prevailed under the antecedent laws. One of the intervening Senators, attorney and spokesman for the group, expressed it quite succinctly and truthfully, we think, when he testified simply that the legislation "was all the Senate would go for."

Interevnors, A. Willie James, J. W. Simmons, J. W. Tyler and Amos T. Hall, specifically attack this legislation as operating to deprive the negro voters in Oklahoma and Tulsa Counties of the equal protection of the laws. They contend that the prescribed districts within those Counties are gerrymandered, in a manner to effectively discriminate against their race, to the end that their voting strength will be unconstitutionally impaired. In view of the immaturity of the legislation, and our treatment of it for the purpose of this case, we do not reach the issue presented by these Intervenors.

Since the enactment of Enrolled House Bill No. 586 and Senate Resolution No. 8, and following the March 8th hearing of this case, the Legislature has passed Enrolled Joint Senate Resolution No. 4. The Resolution refers to the people proposed amendments to the Oklahoma Constitution, providing for reapportionment of both branches of the Oklahoma Legislature, in accordance with a new formula

set forth therein, and providing built-in constitutional means for effecting the reapportionment. It provides that the amendments shall be submitted for adoption or rejection, on the date of the next run-off primary election, which according to State law, will occur in 1964. If the amendments should be submitted and adopted, the Legislature convening in 1965 must act within sixty (60) days, upon failure of which the Apportionment Commission created by the amendments, will proceed to do so, in accordance with the proposed constitutional formula. No one has tendered this Joint Senate Resolution as an appropriate remedy in this case, and we take notice of it only for the purpose of determining whether, in view of its provisions and likelihood of its passage, we should again stay our hand, and await the outcome. In the light of the initiative and referendum history of the State of Oklahoma (see: Appendix—Title 34, O.S.A.) the adoption of the amendments as the constitutional law of this State, seems improbable. Moreover, there is nothing on the face of the proposed amendments to justify the gross disparity between electorial districts for both Houses, as provided therein.[1] In any event,

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[1] Section 1 of the Joint Resolution provides that the State shall be apportioned into 48 Senatorial Districts, in the following manner: "• • • the nineteen most populous counties, as determined by the most recent Federal Decennial Census, shall constitute nineteen senatorial districts with one senator to be nominated and elected from each district; the fifty-eight less populous counties shall be joined into twenty-nine two-county districts with one senator to be nominated and elected from each of the two-county districts • • •." A rough calculation, based upon the Federal census, will show that the disparities betwen the 19 most populous electorial districts will range from less than 30,000 in the smallest of the one-county senatorial districts, to approximately 440,000 in the largest of the one-county senatorial districts. The disparity is even greater (less than 15,000 to approximately 440,000) between the least populous two-county district and the most populous one-county district. The Section creating these districts provides that "consideration shall be given to population, compactness, area, political units, historical precedents, economic and political interests, contiguous territory, and other major factors,

we shall say nor do nothing to interfere with the right of the people to speak freely upon the question. Meanwhile, the improbabilities of its adoption and its doubtfulness as a remedy, will not justify further stay of these proceedings.

After careful consideration of all the exigencies, we have reluctantly decided to reapportion the Oklahoma Legislature by judicial decree, because we are convinced, from all that has transpired in this prolonged proceedings, that the Legislature, as now constituted, is either unable or unwilling to reapportion itself, in accordance with our concept of the requirements of the equal protection clause of the Fourteenth Amendment. We assume this responsibility, fully aware of its gravity and perplexity. We know, of course, that the function of apportioning the State Legislature is essentially legislative in nature; one which the Courts have never before undertaken; and one from which we may very well be precluded, even in the face of inadequate redress for the deprivation of civil rights. We know that the judicial power to grant redress for deprivation of a civil right is usually a negative power, effected by conventional injunctive decree. It may well be that the affirmative relief we grant is in excess of our judicial power. If so, we will know in due time, for the questions are squarely presented, and will undoubtedly be authoritatively decided during the next term of the Supreme Court. See: WMCA, Inc. v. Simon, No. 460; Wesberry v. Vandiver, No. 507; Reynolds v. Sims, No. 508; Vann v. Frank, No. 540; Mary-

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[1] (Continued)

• • •" but there is nothing to indicate that consideration was given to these factors in the creation of the districts, which would be immutably created, unless and until changed by further constitutional amendment.

The fomula provided in the amendment for reapportionment of the House of Representatives, gives every county one Representative, and by the utilization of ratios, progressively restricts representation in the most populous counties.

land Committee On Fair Representation v. Tawes, No. 554; McConnell v. Frink, No. 610; Davis v. Mann, No. 797; and Wright v. Rockefeller, No. 950 (June 11, 1963) 31 L.W. 3404. Meanwhile, we shall proceed on the fundamental premise that equity is never impotent before the law.

In the suggested Findings of Fact and Conclusions of Law, filed by the intervening Senators, we are asked to abstain, and to await adjudication of the constitutionality of this most recent legislation by the State courts. But, in the circumstances, we think it would be unwise and, in effect, a deprivation of the constitutional rights of the plaintiff and his class, to await State court proceedings, which have not been instituted and which, in any event, would not resolve the ultimate question of the appropriateness of the remedy for the redress of a civil right, asserted in this proceedings. The suggestion will, therefore, be denied.

This brings us to the form of relief which is to be afforded, or more specifically, the form of Order for the remedy. While, as we have seen, the equal protection clause of the Fourteenth Amendment is content with fundamental fairness in the exercise of voting rights, *if apportionment is to be our lot, we should not stop short of the ideal.* Of all the plans for reapportionment which have been urged upon us, as an appropriate remedy, we have been favored with a formula which approaches the ideal, to reapportion the Legislature "as near as may be to the equal number of inhabitants" of each district. This plan, known in the proof here as Model C, is submitted by The Bureau of Government Research, of the University of Oklahoma. It represents the judgment of the Acting Attorney General of the State, when this matter was previously under consideration for appropriate remedy. It is an embodiment of the best thinking and contribution of the political scientists and statisticians, who have testified in this case, concerning the critical question of discrimination. We adopted it as

our guideline in our August 3rd Order. When State Question No. 408, Initiative Petition No. 271, providing for a Commission to reapportion the Legislature, was declared to have passed, by proclamation of the Governor, the *de facto* Commission, created thereunder, adopted the Model as affording the most effective plan for reapportioning the Legislature, in accordance with the Oklahoma Constitution and the guidelines of our August 3, 1962 Order. We now adopt it as the pattern for Final Judgment of this Court, and in accordance with the following Order Of Reapportionment.

ORDER OF REAPPORTIONMENT

The Legislature of the State of Oklahoma is hereby apportioned, as hereinafter provided, for the purposes of all future elections within the Decennial, beginning the 16th day after the general elections in November, 1962 and ending the 15th day after the general election in November, 1972, unless and until the Legislature, elected and constituted by virtue of this apportionment, shall reapportion itself, in accordance with the requirements of the equal protection clause of the Fourteenth Amendment:

The ten-year period beginning the 16th day after the general election in November 1962, and ending the 15th day after the general election in November 1972, shall constitute a Decennial Legislative Period of the Legislature of the State of Oklahoma, and said period is hereby divided into five legislative periods of two years each.

The first legisative period shall begin on the 16th day after the general election in November 1962, and end with the 15th day after the general election in November 1964. Senators and representatives heretofore elected at said November 1962 general election shall serve during said first legislative period.

The second legislative period shall begin on the 16th day after the general election in November 1964, and end with the 15th day after the general election in November 1966.

The third legislative period shall begin on the 16th day after the general election in November 1966, and end with the 15th day after the general election in November 1968.

The fourth legislative period shall begin on the 16th day after the general election in November 1968, and end with the 15th day after the general election in November 1970.

The fifth legislative period shall begin on the 16th day after the general election in November 1970.

The Senate

The Oklahoma State Senate shall consist of 44 members, who shall be apportioned during the second, third, fourth and fifth legislative periods prescribed herein among the 44 senatorial districts of the State. The terms of office of Senators elected in the November 1960 general election, as well as those elected at the November 1962 election, will end with the 15th day after the general election of November 1964. The apportionment of the counties of the State into said 44 senatorial districts, in each of which one Senator will be nominated and elected, shall be as follows:

DISTRICT NUMBER		NUMBER OF SENATORS
District 1	Beaver, Cimarron, Harper, Texas, Woods, Woodward	1
District 2	Beckham, Ellis, Greer, Roger Mills, Washita	1
District 3	Harmon, Jackson, Tillman	1
District 4	Blaine, Caddo, Kiowa	1

District 5	Alfalfa, Custer, Dewey, Grant, Major	1
District 6	Kingfisher, Lincoln, Logan	1
District 7	Garfield	1
District 8	Canadian, Grady	1
District 9	Cotton, Jefferson, Stephens	1
District 10-11	Comanche	2
District 12	Carter, Love, Marshall	1
District 13	Atoka, Garvin, Johnston, Murray	1
District 14	Pontotoc, Seminole	1
District 15	McClain, Pottawatomie	1
District 16	Cleveland	1
District 17-24	Oklahoma	8
District 25	Payne	1
District 26	Noble, Osage, Pawnee	1
District 27	Kay	1
District 28	Nowata, Washington	1
District 29-35	Tulsa	7
District 36	Okmulgee, Wagoner	1
District 37	Creek, Okfuskee	1
District 38	Coal, Hughes, Pittsburg	1
District 39	Bryan, Choctaw, Latimer, Pushmataha	1
District 40	LeFlore, McCurtain	1
District 41	Cherokee, Haskell, McIntosh, Sequoyah	1
District 42	Muskogee	1
District 43	Adair, Delaware, Ottawa	1
District 44	Craig, Mayes, Rogers	1
		44

PROVIDED, however, that until the Legislature, as apportioned hereunder, shall by appropriate legislation prescribe the boundaries of the Districts, within any one County of the State entitled to elect more than one Senator, under the provisions of this Order, the candidates for such senatorial offices shall be nominated and elected at large within such Counties; and,

PROVIDED FURTHER, that each such senatorial office shall be designated and distinguished numerically, according to the number of Senators and numerical Districts to which such County is entitled, and all filings of notification and declaration for nomination and election, pursuant to 26 O.S. §163, to any of the offices herein provided, shall designate the number of the office to which the filings are intended to apply.

Senators elected from even numbered Districts for the above second legislative period shall hold office until the 15th day succeeding the general election in November 1966, and Senators elected from the odd numbered Districts for said legislative period shall hold office until the 15th day succeeding the general election in November 1968. The office number and term, in Counties entitled to more than one Senator, shall correspond to the District number and term, as herein provided. The term of office of each Senator thereafter elected shall be four years.

The Election Board of the State of Oklahoma, and all those acting by and under its authority, are hereby ordered and directed to accept filings and conduct elections, in accordance with the provisions of this Order and the applicable provisions of Title 26, Oklahoma Statutes, as amended, and they are hereby enjoined and restrained from accepting filings or conducting elections in any manner inconsistent with the provisions of this Order and the statutes of the State of Oklahoma, not inconsistent herewith.

THE HOUSE OF REPRESENTATIVES

Representatives assigned to each County for each of the five legislative periods, other than for the first period, shall be elected at the general election in the month of November, next preceding the commencement of the respective legislative period.

The representation in the House of Representatives of each County of Oklahoma for the last four legislative periods defined herein, shall be the number listed in the table hereinafter set forth. The number of representatives assigned to each County for each of the five legislative periods, other than for the first period, is shown in the following table. The name of each County and the names of attached Counties are given in said table, and the number of representatives to which same are entitled are listed under the columns designated for said legislative periods, as follows:

COUNTIES	2nd Leg. Period	3rd Leg. Period	4th Leg. Period	5th Leg. Period
Alfalfa-Grant	1	1	1	1
Atoka-Coal	1	1	1	1
Beaver-Harper	1	1	1	1
Beckham-Roger Mills	1	1	1	1
Blaine-Kingfisher	1	1	1	1
Cimarron-Texas	1	1	1	1
Cotton-Jefferson	1	1	1	1
Dewey-Major	1	1	1	1
Ellis-Woodward	1	1	1	1
Greer-Harmon	1	1	1	1
Haskell-McIntosh	1	1	1	1
Johnston-Murray	1	1	1	1
Latimer-Pushmataha	1	1	1	1
Love-Marshall	1	1	1	1
Noble-Pawnee	1	1	1	1
Nowata-Craig	1	1	1	1
Adair	1	1	1	1
Bryan	1	1	1	1
Caddo	1	1	1	2
Canadian	1	1	1	1
Carter	2	2	1	1
Cherokee	1	1	1	1
Choctaw	1	1	1	1

Cleveland	2	2	2	2
Comanche	4	4	4	4
Creek	2	2	1	1
Custer	1	1	1	1
Delaware	1	1	1	1
Garfield	2	2	2	2
Garvin	1	1	1	2
Grady	1	1	2	1
Hughes	1	1	1	1
Jackson	1	1	1	2
Kay	2	2	2	2
Kiowa	1	1	1	1
LeFlore	1	1	1	2
Lincoln	1	1	1	1
Logan	1	1	1	1
McClain	1	1	1	1
McCurtain	1	1	1	1
Mayes	1	1	1	1
Muskogee	3	3	2	2
Okfuskee	1	1	1	1
Oklahoma	19	19	19	19
Okmulgee	1	2	2	1
Osage	2	1	1	1
Ottawa	1	1	2	1
Payne	2	2	2	2
Pittsburg	1	2	2	1
Pontotoc	2	1	1	1
Pottawatomie	2	2	2	2
Rogers	1	1	1	1
Seminole	1	1	1	1
Sequoyah	1	1	1	1
Stephens	2	2	1	1
Tillman	1	1	1	1
Tulsa	15	15	15	15
Wagoner	1	1	1	1

Washington	2	2	2	2
Washita	1	1	1	1
Woods	1	1	1	1
	109	109	107	107

PROVIDED, however, that until the Legislature, as apportioned hereunder, shall by appropriate legislation prescribe the boundaries of the Districts, within any one County of the State entitled to elect more than one Representative, under the provisions of this Order, the candidates for such representative offices shall be nominated and elected at large within such Counties; and,

PROVIDED FURTHER, that each such office shall be designated and distinguished numerically, according to the number of Representatives to which such County is entitled, and all filings of notification and declaration for nomination and election, pursuant to 26 O.S. §163, to any of the offices herein provided, shall designate the number of the office to which the filings are intended to apply.

The Election Board of the State of Oklahoma, and all those acting by and under its authority, are hereby ordered and directed to accept filings and conduct elections, in accordance with the provisions of this Order and the applicable provisions of Title 26, Oklahoma Statutes, as amended, and they are hereby enjoined and restrained from accepting filings or conducting elections in any manner inconsistent with the provisions of this Order and the statutes of the State of Oklahoma, not inconsistent herewith.

Dated this 17th day of July, 1963.

/s/ Alfred P. Murrah
Alfred P. Murrah

/s/ Ross Rizley
Ross Rizley

/s/ Fred Daugherty
Fred Daugherty

[APPENDIX]

MEMORANDUM OF DECISION GRANTING RESTRAINING ORDER

By Order entered January 15, 1963, this Court restrained the intervening senators from further prosecuting in the Oklahoma Supreme Court an original action involving constitutional issues relating to the Oklahoma apportionment laws which are now in process of litigation in this Court and in this suit. Inasmuch as the intervenors have filed notice of appeal from our Order to the Supreme Court of the United States and to the Court of Appeals, and in view of the protracted course of the litigation, it seems appropriate to bring the Order into its proper context.

When this suit was commenced pursuant to Baker v. Carr, the responsible executive state officers who were made defendants all promptly entered their appearance and consented to the jurisdiction of the Court over the subject matter and their person. The Governor, the Secretary of State, the State Treasurer and the State Election Board all answered confessing the truth of the complaint, and agreeing that the complainant and his class were entitled to the relief sought. The Governor, joined by the other defendants, freely confessed that all available state remedies had been exhausted, and that recourse to the federal court under Baker v. Carr was the only remaining course of action. And see statement of the case in *Moss* v. *Burkhart*, 207 F.Supp 885, 889.

At the April 23, 1962 hearing, on plaintiff's application to enjoin the forthcoming May 1st primary election, the responsible defendants urged us to grant an injunction; the Governor offered to convoke an extraordinary session of the Legislature for the purpose of enacting apportionment laws in compliance with the mandate of the Constitution of the State of Oklahoma and the equal protection clause of the 14th Amendment.

After the hearing, but before final decision, a group of individuals calling themselves "Oklahomans for Local Government" were permitted to intervene. They suggested the absence of necessary parties-defendant and further suggested that in view of the confessions of the defendant-state officials, the proceedings was not adversary, and that there should be a realignment of the parties. They specifically denied malapportionment of the Legislature under existing laws and offered to show a rational basis for the existing apportionment. They affirmatively alleged that the apportionment in accordance with the mandate of the Oklahoma Constitution would operate to deny them and their class the equal protection of the laws guaranteed by the 14th Amendment. Finally, it was alleged that the power to reapportion was vested exclusively in the State Legislature, and that it should be afforded an opportunity to perform its constitutional function either in a special session or the next general session.

At the conclusion of the hearing, the Court sustained its jurisdiction of the subject matter as a justiciable controversy. The majority of the Court refused to enjoin the forthcoming primary election, but called attention to the manifest disparity in the elected representation of both branches of the Oklahoma Legislature, and suggested that on the face of the disparity, the plaintiff was entitled to relief under the plain mandate of the Oklahoma Constitution and the 14th Amendment to the federal Constitution. The case was set for trial approximately 50 days later on the issue of rationality of the admitted disparity. When the case came on for trial, plaintiff and those aligned with him, offered evidence without objection tending to show that the disparity in the legislative apportionment was invidiously discriminatory; that apportionment on a numerical basis was the starting point to achieve equal protection of the laws with respect to the election of representatives to the Oklahoma Legislature. The Attorney General of the

State submitted a formula for reapportionment based primarily upon the requirements of the Oklahoma Constitution, modified to comply with the requirements of the 14th Amendment to the federal Constitution. The first intervenors, though present by counsel and participating, offered no evidence on the issue of rationality. Based upon the evidence adduced, the trial court found that the apportionment was invidiously discriminatory, and that the underlying election laws were prospectively void. But no final relief was decreed or granted. Instead, the case was passed until September 10, 1962 for determination of appropriate remedies. At the same time the Court suggested three probable remedies: (1) apportionment by the Legislature in special session; (2) the pending initiative petition; and (3) judicial intervention only as a last restort. And, in that connection, we noted that in the event it became necessary to bring about reapportionment by judicial intervention, it would be time enough to hear and consider any factors which might enter into the reapportionment equation. See Moss v. Burkhart, p. 895.

Before the date set for the hearing on September 10, the first intervenors moved to alter, amend or clarify the decree. On the day before the motion came on for hearing, and on July 30, the intervening senators, represented by the same counsel who represented the first intervenors, moved for permission to intervene, alleging that they should have been joined as parties from the beginning, and prayed that they be permitted to intervene to protect themselves and "their own civil and political rights." Intervention was allowed. In their answer, they acknowledged jurisdiction of the Court to determine the applicability of the 14th Amendment to the rights and claims of the plaintiff, but denied the power of the court to alter or revise the structure of the legislative department of the State in a manner to interfere with the existence, validity or the incumbency of their

respective elective offices. They specifically alleged that any apportionment based upon census population, as provided in the Oklahoma Constitution, would be invidiously discriminatory against them and in contravention of their rights under the 14th Amendment. Finally, they pray "that the issues raised by the plaintiffs and the defendants as herein controverted be tried and determined in the regular course, fully protecting the rights and interest of these answering defendants under the federal Constitution and laws. * * *."

At the hearing on the motion to modify the June 19 interlouctory decree, one of the intervening senators, apparently appearing on behalf of all of the intervening senators, testified in response to direct questions from the court and counsel that he would "vote for * * * and support * * * with all my might and vigor * * *" the final adjudication of the constitutional issues in this court.

Pursuant to the hearing on the motion to alter and amend, the Court clarified its interlouctory decree of June 19, to specify that it did not affect the validity of the forthcoming general election; and that the interlouctory decree applied prospectively to elections in 1964 and thereafter. Further hearing in the case was set approximately 5 months later on March 8, 1963. Meanwhile, a new Legislature would have been elected and in session for approximately 60 days. As a guide line for an appropriate remedy for the malapportionment, the Court expressed the positive view that the Legislature should be reapportioned substantially in accordance with the Oklahoma Constitution and in accordance with a plan and formula submitted by the State Attorney General.

The initiative referendum providing in substance for the creation of a constitutional commission to reapportion the Legislature in accordance with the existing provisions

of the Oklahoma Constitution was submitted to the people on November 6, and the question arose whether the initiative petition had received the required vote of the people and had become the law of the land. The plaintiffs and the responsible state officials sought to clarify the question in this Court as a necessary incident to the determination of appropriate remedies.

About the same time, the intervenors filed a proceedings, first, in the State District Court and then an original proceedings in the Supreme Court of Oklahoma. The original proceedings was an action in the nature of a bill quia temit "to prevent anticipated mischiefs which could not after their occurrence be adequately redressed." The first cause of action sought a declaration to the effect that the initiative petition did not receive the number of required votes and did not become law. The second and third causes of action alleges substantially the same subject matter set forth in their petition for intervention in this case, and seeks substantially the same affirmative relief. When the plaintiff's motion to declare that the initiative petition had become the law of the State came on for hearing in this case, our attention was called to the pendency of the original proceedings in the state court. We thereupon deferred consideration of the same in deference to action by the State Supreme Court. That Court did assume jurisdiction of the first cause of action, but reserved its ruling "as to whether jurisdiction of the remaining causes of action pleaded by the applicants will be assumed." The Oklahoma Court has now determined that the initiative petition "failed of adoption for lack of sufficiency of affirmative votes." Allen, et al. v. Burkhart, et al. (Okla.), decided Dec. 22, 1962. That decision is of course binding here. Thereafter the intervenors amended their petition in the Supreme Court of Oklahoma to reassert the same matters and issues originally pleaded here, and on which the Oklahoma Supreme Court had reserved jurisdiction.

As the litigation now stands, the intervenors are in courts of two sovereign jurisdictions, alleging substantially the same subject matter and seeking substantially the same relief. The gloss of the pleadings may be somewhat different, but the subject matter of the lawsuits and the relief sought are essentially the same. The jurisdiction of both courts may be conceded, as indeed it is. The decisive point of consideration is that early in the course of this litigation, the intervenors invoked this court's jurisdiction and consented to its processes. They now seek to circumvent or frustrate that jurisdiction by provoking unseemly state-federal conflict over the same subject matter. In substance, they would remove a case into which they have intervened to another forum. In this posture, it seems important to sensitive areas of this kind that the Court having first acquired jurisdiction of the subject matter should proceed to a final determination of the tedious questions involved. Any attempted division or dual exercise of the concurrent jurisdiction can lead only to unwarranted confusion, and ought to be avoided. We think that the proper administration of justice and the maintenance of a hormonious state-federal relationship require us to restrain the intervenors from taking their lawsuit elsewhere.

APPENDIX II(a)

(a) Article V, Sections 1-4, incl., Constitution of Oklahoma (Volume I, pp. 62-63, Oklahoma Statutes 1961).

§ 1. Legislature—Authority and composition—Powers reserved to people

The Legislative authority of the State shall be vested in a Legislature, consisting of a Senate and a House of Representatives; but the people reserve to themselves the power to propose laws and amendments to the Constitution and to enact or reject the same at the polls independent

of the Legislature, and also reserve power at their own option to approve or reject at the polls any act of the Legislature.

§ 2. Designation and definition of reserved powers—Determination of percentages

The first power reserved by the people is the initiative, and eight per centum of the legal voters shall have the right to propose any legislative measure, and fifteen per centum of the legal voters shall have the right to propose amendments to the Constitution by petition and every such petition shall include the full text of the measure so proposed. The second power is the referendum and it may be ordered (except as to laws necessary for the immediate preservation of the public peace, health, or safety), either by petition signed by five per centum of the legal voters or by the Legislature as other bills are enacted. The ratio and per centum of legal voters hereinbefore stated shall be based upon the total number of votes cast at the last general election for the State office receiving the highest number of votes at such election.

§ 3. Petitions—Veto power—Elections—Time of taking effect—Style of bills—Duty of legislature

Referendum petitions shall be filed with the Secretary of State not more than ninety days after the final adjournment of the session of the Legislature which passed the bill on which the referendum is demanded. The veto power of the Governor shall not extend to measures voted on by the people. All elections on measures referred to the people of the State shall be had at the next election held throughout the State, except when the Legislature or the Governor shall order a special election for the express purpose of making such reference. Any measure referred to the people by the initiative shall take effect and be in force when it shall have been approved by a majority of the votes cast in such election. Any measure referred to the people by the

referendum shall take effect and be in force when it shall have been approved by a majority of the votes cast thereon and not otherwise.

The style of all bills shall be: "Be it Enacted By the People of the State of Oklahoma."

Petitions and orders for the initiative and for the referendum shall be filed with the Secretary of State and addressed to the Governor of the State, who shall submit the same to the people. The Legislature shall make suitable provisions for carrying into effect the provisions of this article.

§ 4. Referendum against part of act

The referendum may be demanded by the people against one or more items, sections, or parts of any act of the Legislature in the same manner in which such power may be exercised against a complete act. The filing of a referendum petition against one or more items, sections, or parts of an act shall not delay the remainder of such act from becoming operative.

(b) Article XXIV, Sections 1 and 3, Constitution of Oklahoma (Volume I, p. 137, Oklahoma Statutes 1961).

§ 1. Amendments proposed by Legislature—Submission to vote

Any amendment or amendments to this Constitution may be proposed in either branch of the Legislature, and if the same shall be agreed to by a majority of all the members elected to each of the two houses, such proposed amendment or amendments shall, with the yeas and nays thereon, be entered in their journals and referred by the Secretary of State to the people for their approval or rejection, at the next regular general election, except when the Legislature, by a two-thirds vote of each house, shall order a special election for that purpose. If a majority of all the electors voting at such election shall vote in favor of

any amendment thereto, it shall thereby become a part of this Constitution.

If two or more amendments are proposed they shall be submitted in such manner that electors may vote for or against them separately.

No proposal for the amendment or alteration of this Constitution which is submitted to the voters shall embrace more than one general subject and the voters shall vote separately for or against each proposal submitted; provided, however, that in the submission of proposals for the amendment of this Constitution by articles, which embrace one general subject, each proposed article shall be deemed a single proposal or proposition. As amended State Question No. 353, Referendum Petition No. 100. Adopted primary election July 1, 1952.

§ 3. Right of amendment by initiative petition not impaired

This article shall not impair the right of the people to amend this Constitution by a vote upon an initiative petition therefor.

State Question No. 408 Initiative Petition No. 271

"WARNING"

It is a felony for anyone to sign an initiative or referendum petition with any name other than his own, or knowingly to sign his name more than once for the measure, or to sign such petition when he is not a legal voter.

Not Over Forty Names Allowed on a Petition of This Nature

(LABEL)

INITIATIVE PETITION

TO THE HONORABLE J. HOWARD EDMONDSON, GOVERNOR OF OKLAHOMA:

We, the undersigned citizens and legal votes of the State of Oklahoma, respectfully order that the following proposed amendment to the Constitution shall be submitted to the legal voters of the State of Oklahoma for their approval or rejection at the regular general election to be held on the 6th day of November, A.D. 1962, or at a special election which might be called for said purpose, and each for himself says:

"I have personally signed this petition; I am a legal voter of the State of Oklahoma; my residence and postoffce are correctly written after my name. The time for filing this petition expires ninety days from the 29th day of September, 1961. The question we herewith submit to our fellow voters is:

"Shall the following proposed amendment to the Constitution be approved?"

TITLE

A CONSTITUTIONAL AMENDMENT PROVIDING METHOD FOR ENFORCEMENT OF THE PRESENT CONSTITUTIONAL FORMULAE APPORTIONING MEMBERS OF THE HOUSE OF REPRESENTATIVES AND SENATE; VESTING THIS DUTY IN THE ATTORNEY GENERAL, SECRETARY OF STATE AND STATE TREASURER ACTING EX-OFFICIO AS A LEGISLATIVE APPORTIONMENT COMMISSION; CONFERRING ORIGINAL JURISDICTION UPON STATE SUPREME COURT TO REVIEW ANY APPORTIONMENT UPON PETITION OF ANY QUALIFIED ELECTOR UNDER PRESCRIBED CONDITIONS; DEFINING SENATORIAL TERMS; REQUIRING ELECTIONS IN ACCORDANCE WITH APPORTIONMENTS; DECLARING AMENDMENTS SELF-EXECUTING; REPEALING SUBSECTIONS a, b, i and j, SECTION 10, AND AMENDING SECTIONS 11-16 INCLUSIVE, ARTICLE V, CONSTITUTION OF OKLAHOMA.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA, AS A CONSTITUTIONAL AMENDMENT WHICH REPEALS SUBSECTIONS a, b, i AND j OF SECTION 10, ARTICLE V, CONSTITUTION OF OKLAHOMA AND WHICH AMENDS SECTIONS 11, 12, 13, 14, 15 AND 16 THEREOF TO READ AS FOLLOWS:

§11. The duty of apportioning the Legislature under the provisions of this Article is exclusively vested in a Legislative Apportionment Commission composed of the Attorney General, Secretary of State and the State Treasurer. The Legislature is prohibited from passing any Act or Resolution pertaining to the apportionment of the Legislature other than a Resolution submitting to the people an amendment to this Article.

§12(a). The Commission shall make the first apportionments according to the formulae provided in this Article within 45 days following the adoption of this Amendment, and thereafter within 45 days following the official certification of each Federal decennial census. The enumeration of the most recent Federal decennial census shall always be used in ascertaining population.

(b). Each Order of Apportionment of the Senate and House of Representatives shall be in writing and shall be filed with the Secretary of State and shall be signed by at least two members of the Commission.

§13(a). Any qualified elector may seek a review of any apportionment within thirty days from the filing thereof by filing in the Supreme Court of Oklahoma a petition which must set forth a proposed apportionment more nearly in accordance with this Article. Any apportionment of either the Senate or House of Representatives from which review is not sought within such time shall become final.

(b). Upon review the Supreme Court shall determine which apportionment results in the minimum variance of population between districts and otherwise complies with this Article and by appropriate writ, require the same to be filed or refiled, as the case may be, with the Secretary of State forthwith and such apportionment shall become final on the date of said writ.

(c). The Supreme Court, upon petition of any qualified elector alleging failure of the Commission to timely act, is hereby vested with original jurisdiction to compel, and shall compel, the Commission to make the apportionments as herein provided. It shall also have exclusive jurisdiction of any review hereunder. The Court shall give precedence to any proceeding arising under this Section, and if more than one petition be filed, it shall consolidate such proceedings for hearing and disposition, and shall file

its opinion and issue its writ within ninety days from the timely filing of such last petition. In the event any action filed hereunder shall be abandoned or dismissed any other qualified elector shall be allowed to intervene within ten days thereof.

§14. Any apportionment of the Senate or the House of Representatives shall become effective immediately prior to the first filing period for any statewide Primary Election after such apportionment of either said Senate or House of Representatives has become final. The term of all Senators shall expire 15 days after the first general election following any Senatorial apportionment becoming effective regardless of the term for which elected. Senators representing even numbered districts shall, after each apportionment, be elected for an initial term of two years, notwithstanding Section 9.

§15. After any apportionment becomes both final and effective, the State Election Board shall accept filings and conduct the Primary and General Elections in accordance with such apportionment.

§16. The provisions of Sections 9 through 16 of this Article are hereby declared to be self-executing. Existing sub-sections a, b, i and j of Section 10, Article V, Constitution of Oklahoma, are hereby repealed and Sections 11, 12, 13, 14, 15 and 16 thereof as they heretofore existed are likewise repealed and the amendments above set forth are substituted therefor.

APPENDIX II(b)

Article V, Sections 9, 9(a), 9(b), 10 and 11, Constitution of Oklahoma (Volume 1, pp. 64-66, Oklahoma Statutes, 1961).

§ 9. Membership and term of office

The Senate, except as hereinafter provided, shall consist of not more than forty-four members, whose term of office shall be four years: Provided, That one senator elected at the first election from each even numbered district shall hold office until the fifteenth day succeeding the regular state election in Nineteen Hundred and Eight, and one elected from each odd numbered district at said first election shall hold office until the fifteenth day succeeding the day of the regular state election in Nineteen Hundred and Ten: And Provided further, That in districts electing two senators, the two elected at the first election shall cast lots in such manner as the Legislature may prescribe to determine which shall hold the long and which the short term.

§ 9(a). Senatorial districts—Additional senators

At the time each senatorial apportionment is made after the year Nineteen Hundred and Ten the State shall be divided into forty-four districts to be called senatorial districts, each of which shall elect one senator; and the Senate shall always be composed of forty-four senators, except that in event any county shall be entitled to three or more senators at the time of any apportionment such additional senator or senators shall be given such county in addition to the forty-four senators and the whole number to that extent. Said districts shall be numbered from One to Forty-four inclusive, and each of said districts shall contain as near as may be an equal number of inhabitants, *such population to be ascertained by the next preceding Federal census, or in such manner as the Legislature may direct,* and shall be in as compact form as practicable and

shall remain unaltered until the next decennial period, and shall at all times consist of contiguous territory.

§ 9(b). Division of counties, towns and wards—Equality of population

No county shall ever be divided in the formation of a Senatorial district except to make two or more senatorial districts wholly in such county. No town, and no ward in a city, when constituting only one voting precinct, shall be divided in the formation of a senatorial district, nor shall any senatorial district contain a greater excess in population over an adjoining district in the same county than the population of a town, or ward in a city, constituting only one voting precinct therein, adjoining such district. Towns, and wards in cities, constituting only one voting precinct, which may, from their location, be included in either of two senatorial districts, shall be so placed as to make such districts most nearly equal in number of inhabitants.

§ 10. Number and terms—Meeting of first legislature—Apportionment—Review of apportionment

The House of Representatives, until otherwise provided by law, shall consist of one more than one hundred and nine members who shall hold office for two years: Provided, That the representatives elected at the first election shall hold office until the fifteenth day succeeding the day of the regular state election in Nineteen Hundred and Eight: And Provided, That the day on which state elections shall be held shall be fixed by the Legislature.

(a) The first Legislature shall meet at the seat of government upon proclamation of the Governor on the day named in said proclamation, which shall not be more than thirty days nor less than fifteen days after the admission of the State into the Union.

(b) The apportionment of this State for members of the Legislature shall be made at the first session of the Legislature after each decennial Federal census.

(c) The whole population of the State as ascertained by the Federal census, or in such manner as the Legislature may direct, shall be divided by the number one hundred and the quotient shall be the ratio of representation in the House of Representatives for the next ten years succeeding such apportionment.

(d) Every county having a population equal to one-half of said ratio shall be entitled to one representative; every county containing said ratio and three-fourths over shall be entitled to two representatives, and so on, requiring after the first two an entire ratio for each additional representative: Provided, That no county shall ever take part in the election of more than seven representatives.

(e) When any county shall have a fraction above the ratio so large that being multiplied by five the result will be equal to one or more ratios, additional representatives shall be apportioned for such ratio among the several sessions of the decennial period. If there are two ratios, representatives shall be alloted to the fourth and third sessions, respectively; if three, the third, second, and first sessions, respectively; if four, to the fourth, third, second, and first sessions, respectively.

(f) Any county forming with another county or counties a representative district during one decennial period, if it has acquired sufficient population, at a fixed decennial period, shall be entitled to an additional representative, if there shall be left in the district from which it shall have been separated a population sufficient for a representative. No such change shall be made except at the regular decennial period for the apportionment of representatives.

(g) If in fixing any decennial ratio, a county previously a separate representative district shall have less than the number required by the ratio for a representative, such county shall be attached to a county adjoining it and become a part of such representative district.

(h) No county shall ever be divided in the formation of representative districts except to make two or more representative districts in such county. No town, or ward in a city, where it constitutes only one voting precinct, shall be divided in the formation of representative districts, nor shall any representative district contain a greater excess in population over an adjoining district in the same county than the population of a town or ward in a city, constituting only one voting precinct adjoining such district. Counties, towns, or wards in cities, constituting only one voting precinct, which, from location, may be included in either of two districts, shall be so placed as to make said districts most nearly equal in number of inhabitants.

(i) Ascertaining the ratio of representation according to the Federal census, or such other enumeration as the Legislature may provide, and attaching any county, previously having a separate representative but found to have less than the number required by the ratio, to an adjoining county; and determining the number of representatives each county or district shall be entitled to, and for what sessions of the Legislature within the next decennial period; and apportioning the Senators, shall be done by the Legislature and be presented to the Governor for his approval in the same manner as other bills which may be passed by the Legislature.

(j) An apportionment by the Legislature shall be subject to review by the Supreme Court at the suit of any citizen, under such rules and regulations as the Legislature may prescribe. And such court shall give all cases involving apportionment precedence over all other cases and proceedings; and if said court be not in session, it shall convene promptly for the disposal of the same.

(a) Article V, Section 11, Constitution of Oklahoma. (Volume I, pp. 65-66, Oklahoma Statutes 1961).

§ 11. Senatorial districts—Composition and number of senators

Until the apportionment is made by the Legislature after the next Federal decennial census, the State, except as otherwise provided, shall be divided into thirty-three senatorial districts, each of which shall be composed of the counties as named, shall be numbered and elect senators as follows, namely:

First, Beaver, Cimarron, Harper, and Texas, one senator; Second, Beckham, Dewey, Ellis, and Roger Mills, two senators; Third, Woods and Woodward, one senator; Fourth Greer, one senator; Fifth, Jackson and Tillman, one senator; Sixth, Custer, Kiowa, and Washita, two senators; Seventh, Alfalfa and Major, one senator; Eighth, Garfield, one senator; Ninth, Osage, Grant, and Kay, two senators; Tenth, Noble and Pawnee, one senator; Eleventh, Creek and Payne, one senator; Twelfth, Logan, one senator; Thirteenth, Lincoln and Pottawatomie, two senators; Fourteenth, Canadian and Oklahoma, two senators; Fifteenth, Caddo and Grady, two senators; Sixteenth, Blaine and Kingfisher, one senator; Seventeenth, Comanche, Jefferson, and Stephens, two senators; Eighteenth, Carter, Love, and Murray, two senators; Nineteenth, Cleveland, Garvin, and McClain, two senators; Twentieth, Atoka, Bryan, and Coal, two senators; Twenty-first, Latimer and Le Flore, one senator; Twenty-second, Hughes and Okfuskee, one senator; Twenty-third, Pontotoc and Seminole, one senator; Twenty-fourth, Choctaw, McCurtain, and Pushmataha, one senator; Twenty-fifth, Pittsburgh, one senator; Twenty-sixth, Marshall and Johnson, one senator; Twenty-seventh, Haskell, McIntosh, and Muskogee, two senators; Twenty-eighth, Adair and Sequoyah, one senator; Twenty-ninth, Mayes and Craig, one senator; Thirtieth, Ottawa, Delaware, and Cherokee, one senator; Thirty-first, Tulsa and Washington, one senator; Thirty-second, Okmulgee and Wagoner, one senator; Thirty-third, Nowata and Rogers, one senator.

APPENDIX II(c)

(b) Title 14, Oklahoma Statutes, 1961, Sections 9-14, incl.; 21, 22, 31-33, incl.; 41-43, incl.; 45.1-45.4, incl.; 51-55, incl.; 61-63, incl.; 71, 72, 97-100, incl. (Volume 1, pp. 1042-1050, Oklahoma Statutes, 1961).

§ 9. Nominating districts—Nominations—Voting

The Second Senatorial District of the State of Oklahoma, as now constituted by law, shall be divided into two nominating districts; Roger Mills, Ellis and Dewey Counties shall constitute one nominating district and shall nominate a candidate for the State Senate in the primary election of 1942, and each four years thereafter; Beckham County shall constitute a nominating district and shall nominate a candidate for the State Senate in said district at the primary election of 1944, and each four years thereafter; and the candidates so nominated in said districts shall be voted for at the general election following such nomination by all the qualified electors in said Second Senatorial District.

§ 10. Sixth district—Nominating districts

The Sixth Senatorial District of the State of Oklahoma, as now constituted by law, shall be divided into two (2) nominating districts: Washita and Kiowa Counties shall constitute one (1) nominating district and shall nominate a candidate for the State Senate at the primary election of 1942, and each four (4) years thereafter; Custer County shall constitute a nominating district and shall nominate a candidate for the State Senate in said District at the primary election of 1944, and each four (4) years thereafter; and the candidates so nominated in said Districts shall be voted for at the general election following such nomination by all of the qualified electors in said Senatorial District.

§ 11. Ninth and thirty-first districts

From and after the passage of this Act, the Ninth Senatorial District of the State of Oklahoma shall be comprised of the Counties of Grant and Kay; the Thirty-first

Senatorial District shall be comprised of the County of Tulsa.

§ 12. Thirty-fourth district

There is hereby created a Senatorial District to be numbered and known as the Thirty-fourth Senatorial District which shall be comprised of the territory embraced within the Counties of Osage and Washington.

§ 13. Number of senators

Hereafter each of said Senatorial Districts shall be represented by one Senator.

§ 14. Election of senators

At the election held in 1920, and each four years thereafter, there shall be elected one Senator from Senatorial District Number Thirty-four; provided, the Senator representing the Ninth Senatorial District, who is a resident of the territory embraced within the Thirty-fourth Senatorial District, shall represent the Thirty-fourth Senatorial District in the State Senate until a successor shall be elected, as hereinabove provided. Provided further, that at the election held in 1922, and every four years thereafter, there shall be elected one Senator each from Senatorial Districts Number Nine and Number Thirty-one.

§ 21. Thirteenth district—Nominating districts

The Thirteenth Senatorial District shall be divided into two nominating districts, Lincoln County constituting one nominating district, and Pottawatomie County shall constitute one nominating district; and the qualified electors of said nominating districts, as herein created, shall each nominate a candidate for State Senator in said district, as provided by law; and the candidates so nominated to be voted for at the general election, by all the qualified electors of said district.

§ 22. Fifteenth District—Nominating districts

The Fifteenth Senatorial District shall be divided into two nominating districts; Grady County constituting one

nominating district, and Caddo County shall constitute one nominating district, and the qualified electors of said nominating districts, as herein created, shall each nominate a candidate for State Senator in said district, as provided by law; and the candidates so nominated, to be voted for at the general election by all qualified electors of said district.

§ 31. Nominating districts

The Fourteenth Senatorial district shall be divided into two nominating districts, Canadian County constituting one nominating district, and Oklahoma County constituting another nominating district; and the qualified electors of said respective nominating districts as herein created shall each nominate a candidate for State Senator in said district as provided by law; and the candidate so nominated to be voted for at the general election by all the qualified electors of the said Fourteenth Senatorial district.

§ 32. Nominations—Primary elections—District election—Additional senator

From each of said nominating districts candidates for State Senator of the State of Oklahoma, shall be nominated by political parties, or by petitioners of the respective districts, in the manner provided by law, and such candidates shall be voted for in the primary election to be held as provided by law in each of the nominating districts, and after being nominated as herein provided, and as provided by law, the qualified voters and electors of the Senatorial district at large shall vote on all nominations so made; and no electors at such election shall vote for more than one candidate from each district at said election, unless there shall be added additional and further senators to said district other than those now provided for, and if a further or additional senator shall be provided so as to make three in said Senatorial district, then one of said senators shall be nominated from Canadian County, and the remaining senator or senators shall be nominated from Oklahoma County,

and all of the senators thus nominated shall be elected as provided by law.

§ 33. Time for nominations and elections—Intention of act—Number and residence

Canadian County in the nominating district in this act created, shall nominate in said nominating district, one State senator, to be elected in said district at the August primary as provided by law in the year 1918 and such senator so nominated at said primary shall be voted for at the November election in the year 1918, and each four years thereafter. The senator or senators provided by law in said district, other than the one provided for as to Canadian County, shall be nominated at the August primary 1920, and elected at the November election, 1920, and every four years thereafter.

It being the intention of the provisions of this act to give to Canadian County one nominating district for one State senator in said district, and Oklahoma County one nominating senatorial district for one State senator in said district, and Oklahoma County one nominating senatorial district for one or more senators as may be provided by law in said district, provided always, that said district shall be entitled by law to two senators or more, and it further being the intention of this act that one senator shall be a resident of Canadian County and one senator shall be a resident of Oklahoma County, the county from which the nomination shall be respectively made.

§ 41. Nominating districts—Nominations—Election

The Seventeenth Senatorial District of the State of Oklahoma shall be divided into two nominating districts; Stephens County and Jefferson County constituting one nominating district, and Cotton County and Comanche County shall constitute one nominating district; and the qualified electors of said nominating districts, as herein created, shall each nominate a candidate for State Senator

in said district, as provided by law; and the candidates so nominated shall be voted for at the general election, by all the qualified electors of said district.

§ 42. Nominations—Primary and district elections

From each of said nominating districts, candidates for State Senator of the State of Oklahoma, shall be nominated by political parties, or by petitioners of the representative districts, in the manner provided by law, and such candidates shall be voted for in the primary election to be held as provided by law in each of the nominating districts, and after being nominated as herein provided, and as provided by law, the qualified voters and electors of the Senatorial district at large shall vote on all nominations so made; and no electors at such election shall vote for more than one candidate from each district at said election.

§ 43. Time for nominations and elections

Stephens County and Jefferson County, in the nominating district in this Act created, shall nominate in said nominating district one State Senator, to be elected in said district at the August primary as provided by law in the year 1926, and such Senator so nominated at said primary shall be voted for at the November election in the year 1926, and each four (4) years thereafter. The Senator provided by law in said district comprised of Cotton County and Comanche County shall be nominated at the August primary, 1928, and elected at the November election, 1928, and every four (4) years thereafter.

§ 45.1 Eighteenth and Twenty-sixth districts—Counties constituting

From and after the effective date of this Act, the Eighteenth (18th) Senatorial District of the State of Oklahoma shall be comprised of Carter County; the Twenty-Sixth (26th) Senatorial District shall be comprised of the Counties of Love and Marshall.

§ 45.2 Thirty-sixth district created—Counties constituting

There is hereby created a Senatorial District to be numbered and known as the Thirty-Sixth (36) Senatorial District of the State of Oklahoma, which shall be comprised of the territory embraced within the Counties of Murray and Johnston.

§ 45.3 Each district represented by one senator

Hereafter each of said Senatorial Districts shall be represented by one (1) Senator.

§ 45.4 Time of election of senators

At the general election to be held in 1942, and each four (4) years thereafter, there shall be elected one (1) Senator from Senatorial District No. 36; that at the general election to be held in 1944, and each four (4) years thereafter, there shall be elected one (1) Senator from Senatorial District No. 18, and one (1) Senator from Senatorial District No. 26.

§ 51. Nominating districts—Nominations—Election

The Nineteenth Senatorial District of the State of Oklahoma, as now constituted by law, shall be divided into two Nominating Districts; Cleveland and McClain Counties shall constitute one Nominating District and shall nominate a candidate for the State Senate in the primary election of 1934, and each four years thereafter; Garvin County shall constitute a Nominating District and shall nominate a candidate for the State Senate in said District at the primary election of 1936, and each four years thereafter; and the candidates so nominated in the said districts shall be voted for at the general election following said nomination by all of the qualified electors in said Nineteenth Senatorial District.

§ 52. Twentieth and twenty-fourth districts

From and after the passage of this Act, the Twentieth Senatorial District of the State of Oklahoma shall be comprised of the counties of Bryan and Choctaw; the Twenty-

fourth Senatorial District shall be comprised of the Counties of Pushmataha and McCurtain:

§ 53. Thirty-fifth district

There is hereby created a Senatorial District to be numbered and known as the Thirty-fifth Senatorial District, which shall be comprised of the territory embraced within the Counties of Coal and Atoka.

§ 54. Number of senators

Hereafter each of said Senatorial Districts shall be represented by one Senator.

§ 55. Election of senators

At the election held in 1938, and each four years thereafter, there shall be elected one Senator from Senatorial District Numbered Thirty-five; provided, the Senator representing the Twentieth Senatorial District, and whose office expires in 1938, shall represent the Thirty-fifth Senatorial District in the State Senate until a successor shall be elected as hereinabove set forth; provided, further, that the Senator now representing the Twentieth District, who was elected at the election in 1936, and the Senator now representing the Twenty-fourth District, who is a resident of the territory embraced within said District, shall continue to represent said Senatorial Districts Numbered Twenty and Twenty-four, respectively, until 1940; provided, further, that at the election held in 1940, and every four years thereafter, there shall be elected one Senator from Senatorial Districts Number Twenty and Twenty-four.

§ 61. Nominating districts—Nominations—Election

The twenty-seventh senatorial district of the State of Oklahoma shall be divided into two nominating districts; Muskogee County constituting one nominating district and Haskell and McIntosh Counties shall constitute one nominating district, and the qualified electors of said nominating districts, herein created, shall each nominate a candidate

for state senator in said district, as provided by law, and the candidate, so nominated, shall be voted for at the general election by all the qualified electors of said district.

§ 62. Nominations—Primary elections—District election

From each of said nominating districts, candidates for state senator of the State of Oklahoma shall be nominated by political parties or by petitioners of the representative district in the maner provided by law, and such candidates shall be voted for in the primary election to be held, as provided by law, in each nominating district, and after being nominated, as herein provided, and as provided by law, the qualified voters and electors and the senatorial district at large, shall vote on all nominations, so made, and no elector at such election shall vote for more than one candidate from each district at said election.

§ 63. Time for nominations and elections

Muskogee County, in the nominating district, in this Act created, shall nominate in said nominating district one state senator, to be nominated in said district at the August primary, as provided by law, in the year 1926, and such senator, so nominated, at the said primary, shall be voted for at the November election in the year 1926 and each four years thereafter. The senator, provided by law in said district, comprised of Haskell and McIntosh Counties shall be nominated at the August primary, 1928, and elected at the November election in 1928 and every four years thereafter.

§ 71. Twenty-eighth district—Counties comprising

From and after the passage of this Act the Twenty-eighth Senatorial District of the State of Oklahoma shall be comprised of Adair, Cherokee and Sequoyah Counties.

§ 72. Thirtieth district—Counties comprising

From and after the passage of this Act the Thirtieth Senatorial District of the State of Oklahoma shall be comprised of Ottawa and Delaware Counties.

Title 14, Sections 97-100, incl., Oklahoma Statutes 1961 (Volume I, pp. 1047-1051, incl., Oklahoma Statutes 1961).

§ 97. Decennial legislative period—Biennial legislative periods or sessions—Election of representatives

The ten-year period beginning the 16th day after the general election in November, 1962, and ending the 15th day after the general election in November, 1972, shall constitute a Decennial Legislative Period, unless otherwise provided by law. And the period is hereby divided into five legislative periods or sessions of two years each with the number of representatives assigned to each county for each of the legislative periods to be those shown in Section 3 of this Act.

Representatives assigned to each county for each of the five legislative periods shall be elected at the general election in the month of November next preceding the commencement of the respective legislative period.

Unless otherwise provided by law the representatives assigned to each county for each legislative period shall be nominated and elected at large by the electors of the respective counties.

§ 98. Legislative periods

Legislative periods provided for in Section 1 of this Act shall cover these periods:

(a) The first legislative period shall begin on the 16th day after the general election in November, 1962, and end with the 15th day after the general election in November, 1964.

(b) The second legislative period shall begin on the 16th day after the general election in November, 1964, and

end with the 15th day after the general election in November, 1966.

(c) The third legislative period shall begin on the 16th day after the general election in November, 1966, and end with the 15th day after the general election in November, 1968.

(d) The fourth legislative period shall begin on the 16th day after the general election in November, 1968, and end with the 15th day after the general election in November, 1970.

(e) The fifth legislative period shall begin on the 16th day after the general election in November, 1970, and end with the 15th day after the general election in November, 1972.

§ 99. Representation of each county in each period

Until another apportionment of the House of Representatives shall be made in accordance with the terms of the Constitution and laws of Oklahoma, the House of Representatives shall be composed of the representation listed in the table below, and this representation shall be the legislative apportionment of the House of Representatives for each of the five periods, as established in Section 2 of this Act.

The legislative apportionment by legislative periods are hereby fixed as follows, subject, however, to such change as may be required by operation of Section 6 of this Act.

COUNTIES	FIRST PERIOD	SECOND PERIOD	THIRD PERIOD	FOURTH PERIOD	FIFTH PERIOD
Adair	1	1	1	1	1
Alfalfa	1	1	1	1	1
Atoka	1	1	1	1	1
Beaver	1	1	1	1	1
Beckham	1	1	1	1	1

Blaine	1	1	1	1	1
Bryan	2	2	2	2	2
Caddo	2	2	2	2	2
Canadian	2	2	2	2	2
Carter	2	2	2	2	2
Cherokee	1	1	1	1	1
Choctaw	1	1	1	1	1
Cimarron	1	1	1	1	1
Cleveland	3	3	3	3	3
Coal	1	1	1	1	1
Comanche	4	4	4	4	4
Cotton	1	1	1	1	1
Craig	1	1	1	1	1
Creek	2	2	2	2	2
Custer	1	1	1	1	1
Delaware	1	1	1	1	1
Dewey	1	1	1	1	1
Ellis	1	1	1	1	1
Garfield	3	3	3	3	3
Garvin	2	2	2	2	2
Grady	2	2	2	2	2
Grant	1	1	1	1	1
Greer	1	1	1	1	1
Harmon	1	1	1	1	1
Harper	1	1	1	1	1
Haskell	1	1	1	1	1
Hughes	1	1	1	1	1
Jackson	2	2	2	2	2
Jefferson	1	1	1	1	1
Johnston	1	1	1	1	1
Kay	3	3	3	3	3
Kingfisher	1	1	1	1	1
Kiowa	1	1	1	1	1
Latimer	1	1	1	1	1
Le Flore	2	2	2	2	2
Lincoln	1	1	1	1	1
Logan	1	1	1	1	1

Love	1	1	1	1	1
McClain	1	1	1	1	1
McCurtain	2	2	2	2	2
McIntosh	1	1	1	1	1
Major	1	1	1	1	1
Marshall	1	1	1	1	1
Mayes	1	1	1	1	1
Murray	1	1	1	1	1
Muskogee	3	3	3	3	3
Noble	1	1	1	1	1
Nowata	1	1	1	1	1
Okfuskee	1	1	1	1	1
Oklahoma	7	7	7	7	7
Okmulgee	2	2	2	2	2
Osage	2	2	2	2	2
Ottawa	2	2	2	2	2
Pawnee	1	1	1	1	1
Payne	2	2	2	2	2
Pittsburgh	2	2	2	2	2
Pontotoc	2	2	2	2	2
Pottawatomie	2	2	2	2	2
Pushmataha	1	1	1	1	1
Roger Mills	1	1	1	1	1
Rogers	1	1	1	1	1
Seminole	2	2	2	2	2
Sequoyah	1	1	1	1	1
Stephens	2	2	2	2	2
Texas	1	1	1	1	1
Tillman	1	1	1	1	1
Tulsa	7	7	7	7	7
Wagoner	1	1	1	1	1
Washington	2	2	2	2	2
Washita	1	1	1	1	1
Woods	1	1	1	1	1
Woodward	1	1	1	1	1
Total	120	120	120	120	120

[APPENDIX]

§ 100. Division of certain counties into legislative districts

(a) Oklahoma County shall be divided into seven (7) legislative districts as follows:

(1) Legislative District No. 1, Oklahoma County, shall contain the following described territory: Beginning at the intersection of May Avenue and Reno Street and extending along the center line of Reno Street to the center line of High Avenue; thence south to the center line of Southeast 15th Street Oklahoma City; thence west to the center line of Western Avenue; thence south along the center line of Western Avenue to the center line of Southwest 29th Street, Oklahoma City; thence west to the center line of Pennsylvania Avenue; thence south to the center line of Grand Boulevard; thence west to the western boundary of Section 18, Township 11 North, Range 3 West; thence south of said boundary to the Cleveland County line; thence west to the intersection of the Oklahoma County County line; thence north along the western boundary of Oklahoma County to the northwest corner of Deer Creek Township; thence east along the northern boundary of Oklahoma County to the intersection thereof with the Edmond Township; thence south along the western boundary of Range 3 West to the corporate limits of Oklahoma City; thence south on the center line of May Avenue to the center line of Reno Street and point of beginning.

(2) Legislative District No. 2, Oklahoma County, shall contain the following described territory: Beginning at the intersection of High and Reno Streets in Oklahoma City and extending north on the center line of High Avenue, or western boundary line of Section 35, Township 12 North, Range 3 West, to the intersection of Northeast 10th Street; thence east on the center line of Northeast 10th Street and Alice Street to the corporate limits of Oklahoma City; thence east on the southern boundary line of Section 25, Township 12 North, Range 3 West, to the western boundary

of Crutcho Township; thence east to the county line; thence south to the county line; thence west to the intersection of county line with the western boundary of Section 31, Township 11 North, Range 3 West; thence north along said line to the corporate limits of Oklahoma City or Grand Boulevard; thence east on center line of Grand Boulevard to Pennsylvania Avenue, Oklahoma City; thence north along center line of Pennsylvania Avenue to the center line of Southwest 29th Street; thence east to the center line of Western Avenue; thence north to the center line of Southwest 15th Street; thence east to the center line of High Avenue or point of beginning.

(3) Legislative District No. 3, Oklahoma County, shall contain the following described territory: Beginning at the intersection of Pennsylvania Avenue and Northwest 36th Street, and extending east along the center line of North-West 36th Street to the center line of Western Avenue; thence south along the center line of Western Avenue to the center line of Northwest 23rd Street; thence east along the center line of 23rd Street to the center line of Harvey Avenue; thence south along the center line of Harvey Avenue to the center line of Northwest 10th Street; thence west along the center line of Northwest 10th Street to the center line of Pennsylvania Avenue and thence north along said center line to Northwest 36th Street, or place of beginning.

(4) Legislative District No. 4, Oklahoma County, shall contain the following described territory: Beginning at the intersection of North Harvey Avenue and Northwest 23rd Street in Oklahoma City, and extending east along the center line of Northwest 23rd and Northeast 23rd Streets to Kelley Avenue; thence north along the center line on Kelley Avenue to its intersection with Northeast 50th Street; thence east along the center line of Northeast 50th Street to the western boundary of Crutcho Township;

thence south along the western boundary of Crutcho Township to the center of northeast 10th Street; thence west along the center line of Northeast 10th Street and Northwest 10th Street to the center line of North Harvey Avenue; thence north along the center line of North Harvey Avenue to the point of beginning.

(5) Legislative District No. 5, Oklahoma County, shall contain the following described territory: Beginning at the intersection of May Avenue, and Northwest 10th Street, and extending east along the center line of Northwest 10th Street and Northeast 10th Street to the center line of Kelley Avenue; thence south along the center line of Kelley Avenue and High Street to the center line of Reno Avenue; thence west along the center line of Reno Avenue to the center line of May Avenue; thence north along the center line of May Avenue, to the center line of Northwest 10th Street or place of beginning.

(6) Legislative District No. 6, Oklahoma County, shall contain the following described territory: Begining at the intersection of Northwest 23rd Street and Western Avenue; thence east along the center line of Northwest 23rd Street and Northeast 23rd Street to Kelley Avenue; thence north along the center line of Kelley Avenue to the intersection of Northeast 50th Street; thence east along the center line of Northeast 50th Street to the western boundary of Crutcho Township; thence south along the western boundary of Crutcho Township to its intersection with Northeast 10th Street; thence east along the center line of Northeast 10th Street extended to the Pottawatomie County line; thence north along the eastern boundary to Elk, Dewey and Luther Townships to the Logan County line; thence west along said line and the north line of Luther, Deepfork and Lincoln Townships to the Edmond Township line; thence south along the western boundary of Lincoln and Hartzell Townships to the Oklahoma Township line; thence west along

said Township line to the center of North Western Avenue; thence south along the center line of North Western Avenue to the intersection of same with Northwest 23rd Street or the point of beginning.

(7) Legislative District No. 7, Oklahoma County, shall contain the following described territory: Beginning at the intersection of May Avenue and Northwest 10th Street and extending east along the center line of Northwest 10th Street to the center line of Pennsylvania Avenue; thence north along the center line of Pennsylvania Avenue to the center line of North west 36th Street; thence east along the center line of Northwest 36th Street to the center line of Western Avenue; thence north along the center line North Western Avenue to the corporate limits of Oklahoma City; thence north along the western boundary of Sections 9 and 14, Township 12 North, Range 3 West to the Britton Township line; thence east along the Britton Township line to the western boundary of Hartzell Township; thence north along the western boundary of Hartzell and Lincoln Township to the Logan County line; thence west six miles to the western boundary of Edmond Township; thence south along the western boundary of Edmond, Britton and Oklahoma Townships to the corporate limits of Oklahoma City; thence south to the center line of May Avenue, to the intersection of Northwest 10th Street or point of beginnig.

(b) Garfield County shall be divided into three (3) legislative districts as follows:

(1) Legislative District No. 1 and Legislative District No. 2 shall consist of the City of Enid. Candidates in these districts shall be residents of such districts and shall be nominated in primary elections by the electors of these districts and elected in the general elections by the electors of these districts.

(2) Legislative District No. 3 shall consist of all of Garfield County not embraced in District No. 1 and District No. 2. Candidates in this district shall be residents of this district and shall be nominated and elected by the electors of the district.

(c) Creek County shall be divided into two (2) legislative districts as follows:

(1) Legislative District No. 1 shall include the City of Sapulpa, the Town of Kiefer, and the following townships: Mannford, Hazlip, Sapulpa, Kellyville, and Mounds.

(2) Legislative District No. 2 shall include the cities of Drumright and Bristow and the following townships: Tiger, Olive, Shannon, Depew, Bristow, Sunnyslope, Lakeside, Newby, and Euchee.

Candidates in these districts shall be electors of such districts and shall be nominated in primary elections by the electors of these districts and elected in the general elections by the electors of the county at large.

(d) LeFlore County shall be divided into two (2) legislative districts as follows:

(1) Legislative District No. 1 shall include the following election precincts as now established or as may hereafter be changed or altered:

Cowlington Pct. No. 1, Tucker Pct. No. 2, Spiro Pct. No. 1, Spiro Pct. No. 2, Spiro Pct. No. 3, Braden Pct. No. 1, Skulleyville Pct. No. 2, Pocola Pct. No. 1, Arkoma Pct. No. 2, Bokoshe Pct. No. 1, Bokoshe Pct. No. 2, Bokoshe Pct. No. 3, Milton Pct., Cameron Pct. No. 1, Williams Pct. No. 2, Rock Island Pct. No. 3, Tahoma Pct. No. 4, Shady Point Pct. No. 1, Panama Pct. No. 2, Hill Pct. No. 1, Gillmore Pct. No. 2, Monroe Pct., Tarby Pct. No. 2, Fairview Pct. No. 3, Calhoun Pct. No. 1, Walls Pct. No. 2, Wister Pct. No. 1, Fanshawe Pct. No. 2, Kennedy Pct. No. 3.

(2) Legislative District No. 2 shall include the following election precincts as now established or as may hereafter be changed or altered:

Poteau City Ward No. 1, Poteau City Ward No. 2, Poteau City Ward No. 3, Poteau City Ward No. 4, Howe Pct. No. 1, Howe Pct. No. 2, Glendale, Howe Pct. No. 3, Oakridge Pct. No. 4, Heavener City Ward No. 1, Heavener City Ward No. 2, Heavener City Ward No. 3, Heavener City Ward No. 4, Summerfield Pct. No. 1, Le Flore Pct. No. 2, Heavener Twp. Pct. No. 2, Reichert Pct. No. 3, Norman Pct. No. 4, Independence Pct. No. 5, Conser Pct. No. 1, Hodgen Pct. No. 2, Hontubby Pct. No. 3, Stapp Pct. No. 4, Page Pct. No. 1, Haw Creek Pct. No. 2, Muse Pct. No. 1, Big Cedar Pct. No. 2, Octavia Pct. No. 1, Cusher Pct. No. 2, Burkhart Pct. No. 3, Talihina Pct. No. 1, Forest Grove Pct. No. 2, Whitesboro Pct. No. 3, Forrester Pct. No. 6, Forest Hill Pct. No. 7, Midway Pct. (Monroe Twp.).

(3) In order to file as a candiate in either district the candidate must have lived the six (6) months immediately preceding filing date in said district, and the candidates so filing shall be voted on in primary elections by the electors of their particular district, and shall be voted on in the general election by the electors of the county at large.

(c) Payne County shall be divided into two (2) legislative districts as follows:

(1) Legislative District No. 1 shall include the following townships as in existence at the time of the effective date of this Act: Rose, Pawnee, Cimarron, Mound, Eagle, Union, Indian, Clayton, Henry, and Glencoe.

(2) Legislative District No. 2 shall include all of Payne County not embraced in Legislative District No. 1, as created by this Act.

(3) Candidates in these districts shall be electors of such districts and shall be nominated in the primary elec-

tions by the electors of the respective district and elected in the general elections by the electors in the respective legislative district.

(f) Seminole County shall be divided into two (2) legislative districts as follows:

(1) Legislative District No. 1 shall be composed of the following townships: Red Mound, Brown, Miller, Lincoln, and Konawa.

(2) Legislative District No. 2 shall be composed of the following townships: Econtuchka and Wolf.

(3) Candidates in these districts shall be electors of such districts and shall be nominated in the primary elections by the electors of the respective district and elected in the general elections by the electors in the respective legislative district.

APPENDIX II(d)

AN ACT

AN ACT RELATING TO LEGISLATIVE APPORTIONMENT OF THE HOUSE OF REPRESENTATIVES UNDER THE PROVISIONS OF SECTION 10, ARTICLE 5 OF THE CONSTITUTION OF OKLAHOMA; PRESCRIBING A DECENNIAL LEGISLATIVE PERIOD BEGINNING THE SIXTEENTH DAY AFTER THE GENERAL ELECTION IN NOVEMBER, 1962, AND ENDING THE FIFTEENTH DAY AFTER THE GENERAL ELECTION IN NOVEMBER 1972; DIVIDING THE DECENNIAL PERIOD INTO FIVE LEGISLATIVE PERIODS OF TWO YEARS EACH; ESTABLISHING REPRESENTATIVE DISTRICTS AND THE BOUNDARIES THEREOF; DESIG-

NATING THE NUMBER OF REPRESENTATIVES FOR EACH LEGISLATIVE PERIOD DURING THE DECENNIAL LEGISLATIVE PERIOD; REPEALING CONFLICTING LAWS; AND MAKING PROVISIONS SEVERABLE.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. The ten-year period beginning the 16th day after the general election in November, 1962, and ending the 15th day after the general election in November, 1972, shall constitute a Decennial Legislative Period, unless otherwise provided by law. And the Period is hereby divided into five Legislative Periods or sessions of two years each with the number of representatives assigned to each county or multi-counties for each of the Legislative Periods, except the first Period, to be those shown in Section 3 of this Act. Representatives for the first Period shall be those provided by law.

Representative post or posts assigned to each county or multi-counties for the respective Legislative Period shall be filled by nominees elected at the general election in the month of November next preceding the commencement of the respective Legislative Period.

And, unless otherwise provided by law, the representative or representatives assigned for each county or multi-counties for the respective Legislative Period shall be nominated and elected at large by the electors of the respective county or counties.

SECTION 2. Legislative Periods provided for in Section 1 of this Act shall cover these periods:

(a) The first Legislative Period shall begin on the 16th day after the general election in November, 1962, and end with the 15th day after the general election in 1964.

(b) The second Legislative Period shall begin on the 16th day after the general election in November, 1964, and end with the 15th day after the general election in November, 1966.

(c) The third Legislative Period shall begin on the 16th day after the general election in November, 1966, and end with the 15th day after the general election in November, 1968.

(d) The fourth Legislative Period shall begin on the 16th day after the general election in November, 1968, and end with the 15th day after the general election in November, 1970.

(e) The fifth Legislative Period shall begin on the 16th day after the general election in November, 1970, and end with the 15th day after the general election in November, 1972.

SECTION 3. Until another apportionment of the House of Representatives shall be made in accordance with the provisions of the Constitution and laws of Oklahoma, the House of Representatives shall be composed of the representation listed in the table hereinafter set forth.

It is the legislative interpretation of the provisions of the Oklahoma Constitution relating to apportionment of representatives that since a county having a population of at least one-half ratio is entitled to one full time representative, then for each additional one-fifth of a full ratio, the county or combination of counties may have an additional representative for a legislative session during the decennial period. The name of each county and the names of attached counties, together with representation entitlements, are listed under columns designated for the second, third, fourth and fifth Legislative Periods. The apportionments:

COUNTIES	2nd Leg. Period	3rd Leg. Period	4th Leg. Period	5th Leg. Period
Alfalfa-Grant	2	1	1	1
Atoka-Pushmataha	2	1	1	1
Beaver-Harper	1	1	1	1
Cimarron-Texas	2	1	1	1
Coal-Hughes	2	1	1	1
Cotton-Jefferson	1	1	1	1
Craig-Nowata	2	2	1	1
Dewey-Ellis-Roger Mills	2	1	1	1
Greer-Harmon	1	1	1	1
Haskell-Latimer	2	1	1	1
Johnston-Murray	2	1	1	1
Kingfisher-Major	2	1	1	1
Love-Marshall	1	1	1	1
Noble-Pawnee	2	2	1	1
Adair	1	1	1	1
Beckham	2	1	1	1
Bryan	1	2	2	1
Blaine	1	1	1	1
Caddo	2	2	1	1
Canadian	1	2	2	1
Carter	2	2	2	1
Cherokee	1	1	1	2
Choctaw	1	1	1	1
Cleveland	3	2	2	2
Comanche	4	4	4	4
Creek	2	2	2	1
Custer	1	2	2	1
Delaware	1	1	1	1
Garfield	2	3	3	2
Garvin	2	2	1	1
Grady	2	2	1	1
Jackson	2	2	1	1

Kay	2	3	3	2
Kiowa	1	1	1	1
LeFlore	2	2	1	1
Lincoln	1	1	1	2
Logan	1	1	1	2
McClain	1	1	1	1
McCurtain	2	2	1	1
McIntosh	1	1	1	1
Mayes	1	1	1	2
Muskogee	3	3	3	2
Okfuskee	1	1	1	1
Oklahoma	7	7	7	7
Okmulgee	2	2	2	1
Osage	2	2	2	1
Ottawa	2	2	1	1
Payne	2	2	2	2
Pittsburg	2	2	2	1
Pontotoc	2	2	1	1
Pottawatomie	2	2	2	2
Rogers	1	1	1	2
Seminole	2	2	1	1
Sequoyah	1	1	1	2
Stephens	2	2	2	1
Tillman	1	1	1	1
Tulsa	7	7	7	7
Wagoner	1	1	1	1
Washington	2	2	2	2
Washita	1	1	1	2
Woods	1	1	1	1
Woodward	1	1	1	1
TOTALS	112	107	96	91

Provided however that when a legislative district contains two counties and said legislative district shall be entitled to two representatives, then each said county shall be a nominating district.

SECTION 4. Creek County shall be divided into two (2) legislative districts as follows:

(1) Legislative District No. 1 shall include the City of Sapulpa, the Town of Kiefer, and the following townships: Mannford, Hazlip, Sapulpa, Kellyville and Mounds.

(2) Legislative District No. 2 shall include the cities of Drumright and Bristow and the following townships: Tiger, Olive, Shannon, Depew, Bristow, Sunnyslope, Lakeside, Newby and Euchee.

SECTION 5. Any county eligible for and receiving an apportionment of two or more representatives for any of the Legislative Periods in the Decennial Legislative Period may have districts as provided by law. Counties without legislative districts shall nominate and elect Representatives from the county-at-large.

SECTION 6. Title 14, O.S. 1961, Sections 97 through 99, 100(b), (c), (d), (e) and (f), and 101, and all parts of acts in conflict herewith are hereby repealed.

SECTION 7. The provisions of this Act are severable, and if any part or provision hereof shall be held void, the decision of the Court so holding shall not affect or impair any of the remaining parts or provisions of this Act.

APPENDIX II(e)

A RESOLUTION

A JOINT RESOLUTION RELATING TO APPORTIONMENT OF THE MEMBERS OF THE OKLAHOMA STATE SENATE; DESIGNATING DISTRICTS; AND REPEALING CONFLICTING LAWS.

WHEREAS, the people of Oklahoma by adoption of the Constitution of Oklahoma have provided for a method of determining membership in the State Legislature; and

WHEREAS, the Constitution of the State of Oklahoma specifies that the State shall be divided into districts for the election of State Senators and further states that such districts shall be based upon population as "ascertained by the next preceding Federal Census, or in such manner as the Legislature may direct"; and

WHEREAS, the quoted provision of the Constitution of the State of Oklahoma specifically authorizes a determination of districts in such manner as the Legislature may direct; and

WHEREAS, by other standards and guides written into the Constitution of the State of Oklahoma, it is apparent that the Legislature is authorized to consider other factors in addition to the number of persons within a district; and

WHEREAS, a census is not a true representation of the permanent population of an area because of the inclusion within such census of migratory, transient, and temporary residents; and

WHEREAS, the number of registered voters and the number of people actually voting in the last election, among other factors, should be taken into consideration in determining permanent population; and

WHEREAS, the Legislature should truly reflect a representation of the permanent citizens of an area in order to provide proper legislation for those affected; and

WHEREAS, twenty-two of the present State Senators were elected at the general election of 1962 for a term of four years, and the interests of the State of Oklahoma and its people will be best served by permitting each of such incumbent Senators to serve out the entire term for which he was elected.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE TWENTY-NINTH LEGISLATURE OF THE STATE OF OKLAHOMA:

SECTION 1. Under the authority of the Oklahoma Constitution, it is hereby declared that representation in the Oklahoma State Senate shall be based on the permanent population of the counties.

SECTION 2. The State of Oklahoma is hereby divided into forty-seven senatorial districts to be numbered and to include the territory within the counties hereafter indicated, and one State Senator shall be elected from each such district:

DISTRICT NUMBER	COUNTIES IN DISTRICT
1	Cimarron, Texas, Beaver, Harper
2	Beckham, Harmon, Greer
3	Jackson, Tillman
4	Kiowa, Washita
5	Custer, Dewey, Roger Mills
6	Woods, Ellis, Woodward
7	Major, Grant, Alfalfa
8	Blaine, Canadian
9	Caddo
10	Comanche
11	Stephens
12	Grady
13	Kingfisher, Logan
14	Garfield
15	Kay
16	Payne
17	Oklahoma
18	Oklahoma
19	Oklahoma

20	Oklahoma
21	Cleveland
22	Garvin, McClain
23	Carter
24	Cotton, Jefferson, Love, Marshall
25	Murray, Johnston, Coal, Atoka
26	Pontotoc
27	Pottawatomie
28	Seminole, Hughes
29	Lincoln, Okfuskee
30	Creek
31	Osage, Noble, Pawnee
32	Washington
33	Tulsa
34	Tulsa
35	Tulsa
36	Okmulgee
37	Pittsburg
38	Bryan, Choctaw
39	Pushmataha, McCurtain
40	LeFlore
41	Haskell, Latimer, McIntosh
42	Muskogee
43	Sequoyah, Adair
44	Wagoner, Cherokee
45	Rogers, Nowata
46	Craig, Mayes
47	Ottawa, Delaware

SECTION 3. Districts Nos. 17, 18, 19, and 20 shall be wholly within Oklahoma County, and shall respectively comprise the following described area:

Oklahoma County shall be divided into four senatorial districts as follows:

(a) District No. 17 shall comprise the following described area: Beginning at the intersection of North 10th

Street and the center line of the Santa Fe Railroad in Oklahoma City, thence northerly along the center line of the Santa Fe Railroad to the northern Oklahoma County boundary, thence west to the western Oklahoma County boundary, thence south to the center line of North 10th Street, thence east to the center line of the Santa Fe Railroad, which is the point of beginning.

(b) District No. 18 shall comprise the following described area: Beginning at the intersection of North 10th Street and the center line of the Santa Fe Railroad in Oklahoma City, thence northerly along the center line of the Santa Fe Railroad to the northern Oklahoma County boundary, thence east to the eastern Oklahoma County boundary; thence south to the center line of North 10th Street, thence west to the center line of the Santa Fe Railroad, which is the point of beginning.

(c) District No. 19 shall comprise the following described area: Beginning at the intersection of North 10th Street and the center line of the Santa Fe Railroad in Oklahoma City, thence southerly along the center line of the Santa Fe Railroad to the southern Oklahoma County boundary, thence west to the western Oklahoma County boundary, thence north to the center line of North 10th Street, thence east to the center line of the Santa Fe Railroad, which is the point of beginning.

(d) District No. 20 shall comprise the following described area: Beginning at the intersection of North 10th Street and the center line of the Santa Fe Railroad in Oklahoma City, thence southerly along the center line of the Santa Fe Railroad to the southern Oklahoma County boundary, thence east to the eastern Oklahoma County boundary, thence north to the center line of North 10th Street, thence west to the center line of the Santa Fe Railroad, which is the point of beginning.

SECTION 4. Districts Nos. 33, 34, and 35 shall be wholly within Tulsa County, and shall respectively comprise the following described area:

(a) District No. 33 shall comprise all that portion of Tulsa County lying north of a line described as: Beginning at a point where Fairview Street intersects the boundary line between Tulsa County and Osage County, thence east along the center line of Fairview Street to Main Street; thence south along the center line of Main Street to the Frisco Railroad; thence northeasterly along the center line of the Frisco Railroad to Lewis Avenue; thence south along the center line of Lewis Avenue to 5th Street; thence east along the center line of 5th Street to Harvard Avenue; thence north along the center line of Harvard Avenue to 4th Place; thence east along the center line of 4th Place to Memorial Drive; thence north along the center line of Memorial Drive to Admiral Place; thence east on Admiral Place to 145th Street East; thence north along the center line of 145th Street East to a point where 145th Street East intersects the boundary line between Tulsa County and Rogers County, at the extreme southwest corner of Rogers County.

(b) District No. 34 shall comprise all of that portion of Tulsa County lying south and west of a line described as: Beginning at a point where Fairview Street intersects the boundary line between Tulsa County and Osage County, thence east along the center line of Fairview Street to Main Street; thence south along the center line of Main Street to the Frisco Railroad; thence northeasterly along the center line of the Frisco Railroad to Lewis Avenue; thence south along the center line of Lewis Avenue to 13th Street; thence west along the center line of 13th Street to Peoria Avenue; thence south along the center line of Peoria Avenue to 61st Street, thence west along the center line of 61st Street to the east bank of the Arkansas River, thence southward following the east bank of the Arkansas River

to a point opposite and directly north of Mingo Road; thence south across the Arkansas River, and following the center line of Mingo Road to the intersection of Mingo Road and the boundary line between Tulsa County and Okmulgee County.

(c) District No. 35 shall comprise all of that portion of Tulsa County lying south and east of a line described as: Beginning at a point where 145th Street East intersects the boundary line between Tulsa County and Rogers County at the extreme southwest corner of Rogers County, thence south along the center line of 145th Street East to Admiral Place; thence west along the center line of Admiral Place to Memorial Drive; thence south along the center line of Memorial Drive to 4th Place; thence west along the center lien of 4th Place to Harvard Avenue; thence south along the center line of Harvard Avenue to 5th Street; thence west along the center line of 5th Street to Lewis Avenue; thence south along the center line of Lewis Avenue to 13th Street; thence west along the center line of 13th Street to Peoria Avenue; thence south along the center line of Peoria Avenue to 61st Street; thence west along the center line of 61st Street to the east bank of the Arkansas River; thence southward, following the east bank of the Arkansas River to a point opposite and directly north of Mingo Road; thence south across the Arkansas River and following the center line of Mingo Road to the intersection of Mingo Road and the boundary line between Tulsa County and Okmulgee County.

SECTION 5. The term of office of all State Senators shall be four years, except as herein provided.

SECTION 6. One State Senator shall be elected from each of the following numbered districts at the regular State general election held during the year Nineteen Hundred Sixty-four; and the Senator so elected from each such

district shall hold office for a term of four years commencing the fifteenth day succeeding such general election:

DISTRICTS NOS. 2, 5, 9, 10, 13, 14, 17, 19, 22, 23, 24, 26, 27, 28, 31, 32, 34, 36, 38, 39, 41, 43, 44, 47.

SECTION 7. One State Senator shall be elected from each of the following numbered districts at the regular State general election held during the year Nineteen Hundred Sixty-six; and the Senator so elected from each such district shall hold office for a term of four years commencing the fifteenth day succeeding such general election:

DISTRICTS NOS. 1, 3, 4, 6, 7, 8, 11, 12, 15, 16, 18, 20, 21, 25, 29, 30, 33, 35, 37, 40, 42, 45, 46.

SECTION 8. Nothwithstanding any provision herein to the contrary, State Senators shall be elected from Districts Nos. 18, 20, 30, and 33 at the regular State general election held during the year Nineteen Hundred Sixty-four, and the Senator so elected from each such district shall hold office for a term of two years commencing the fifteenth day succeeding such general election.

SECTION 9. Nothwithstanding any provision herein to the contrary, each State Senator heretofore elected for a four-year term at the general election held during the year Nineteen Hundred Sixty-two from a previously-existing senatorial district comprising in whole or in part territory by this Act included within District No. 5 or District No. 28, as herein described, shall serve for the remainder of the four-year term for which he was elected, or until fifteen days succeeding the regular general election held during the year Nineteen Hundred Sixty-six, unless he shall sooner vacate such office.

SECTION 10. Twenty-two of the present State Senators who were elected at the general election of 1962 for terms

of four years shall continue to serve for the term of office for which they were elected.

SECTION 11. It is hereby declared to be the intention of the legislature that neither this Act, nor any section, clause, provision, part, or sentence thereof shall be severable from or exist separately from this Act or any other section, clause, provision, part, or sentence thereof; and that if any such section, clause, provision, part, or sentence of this Act shall hereafter be adjudged by final judgment of any court of competent jurisdiction to be unconstitutional, or otherwise invalid or ineffective for any reason whatever, then and in that event this entire Act and each and every section and provision thereof shall thereby be invalidated, and this Act shall thereupon be null and void in its entirety for all purposes.

SECTION 12. 14 O.S. 1961, §§ 9 through 14, 21, 22, 31, 32, 33, 41, 42, 43, 45.1, 45.2, 45.3, 45.4, 51, 52, 53, 54, 55, 61, 62, 63, 71, and 72 are hereby repealed.

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In the

SUPREME COURT OF THE UNITED STATES

October Term, 1963

No. 476

OLLIVER PEET WILLIAMS, State Treasurer, State of Oklahoma; A. F. SHAW, State Auditor, State of Oklahoma; J. D. DUNN, LAWSON LANSDOWN and MINOR CONNING, comprising the Oklahoma Tax Commission, State of Oklahoma; and HAROLD PUGH, MAYNE M. EARNS and FRANK BRYAN, comprising the State Election Board, State of Oklahoma,

Appellants,

VERSUS

HARRY R. MOSS,
Appellee.

MOTION TO DISMISS

Bob Warren
445 Commerce Exchange Building
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Attorney for Appellee

October, 1963.

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In the
Supreme Court of the United States
OCTOBER TERM, 1963

No. 476

COWBOY PINK WILLIAMS, State Treasurer, State of Oklahoma; A. F. SHAW, State Auditor, State of Oklahoma; J. D. DUNN, LAWTON LEININGER and MIKE CONNERS, comprising the Oklahoma Tax Commission, State of Oklahoma; and HASKELL PUGH, MATHER M. EAKES and FRANK RENEAU, comprising the State Election Board, State of Oklahoma,

Appellants,

VERSUS

HARRY R. MOSS,
Appellee.

MOTION TO DISMISS

Comes now the Appellee (Plaintiff below) moving the Court to dismiss this Appeal and for cause he says:

THAT a complete and certified copy of the pleadings hereinafter referred to are each made an Appendix and attached to the Motion to Dismiss of the Council of Democratic Neighborhood Clubs and by this reference the same are made part hereof.

THAT the Attorney General of Oklahoma as counsel for the Appellants herein presents the following as proper parties to appeal:

(1) *William A. Burkhart,* State Treasurer for the State of Oklahoma and predecessor in office of the said Cowboy Pink Williams, filed an Answer herein, which has never been repudiated by the said Cowboy Pink Williams and by which he is bound, presented the following prayer:

> "WHEREFORE, this defendant prays that the Complaint of the plaintiff be denied insofar as it seeks injunctive relief against this defendant, restraining him from paying valid state warrants, and further prays that the Court enter such appropriate orders as will effect a re-apportionment of the Legislature in such a manner that it will not be in violation of the Fourteenth Amendment of the Constitution of the United States."

(2) *Andy Anderson,* State Auditor of the State of Oklahoma and predecessor in office to A. J. Shaw, filed in his official capacity an Answer, which has never been repudiated by the said A. J. Shaw (and by which as state officer he is bound) the same tendering the following allegations:

> "A. Defendants admit that this court has jurisdiction in this action.
>
> "B. Defendants deny that plaintiff is entitled to the relief prayed for against them in his complaint and pertinent amendments thereof; and in this connection allege that defendant's functions and duties, insofar as this case is concerned, are purely ministerial, and are not affected by the fact that the legislature of Okla-

homa may not be, as alleged by plaintiff, apportioned in the manner prescribed by Sections 9 to 16, Article 5, of the Oklahoma Constitution."

THAT said pleading of the said Andy Anderson was signed by Mac Q. Williamson, predecessor in office to the present Attorney General.

(3) In said Answer of the said Andy Anderson, the members of the *Tax Commission of Oklahoma* (now and then), Appellants joined and were also represented by the said Mac Q. Williamson, predecessor in office to the present Attorney General.

(4) The *State Election Board of the State of Oklahoma*, whose predecessors in office filed an Answer in said suit (by which their successors in office are bound); which said Answer tendered the following prayer:

> "WHEREFORE, having fully answered, these Defendants pray that this Court enter such Judgment and Order as is just and equitable under the circumstances, which Judgment and Order these Defendants shall abide."

THAT so, no party named as Appellant in said No. 476 was aggrieved by the Judgment of the Court and therefore no party so named has any right of appeal.

SID WHITE
445 Commerce Exchange Building
Oklahoma City, Oklahoma

Attorney for Appellee

ARGUMENT AND BRIEF IN SUPPORT OF MOTION TO DISMISS

THAT under the Rules of this Honorable Court and the statutes where they exist, no person except one "aggrieved" by the Judgment has any right of appeal here. *United States* v. *Adamant Co., et al.*, 197 F.2d 1.

THAT the Enabling Act of the State of Oklahoma in its Section 3 provides:

> "The constitution shall be republican in form, and make no distinction in civil or political rights on account of race or color, and shall not be repugnant to the Constitution of the United States and the principles of the *Declaration of Independence.*"

THAT therefore and in obedience to said provision of its Enabling Act the Constitution of the State of Oklahoma in Section 45 of its Article 25-A reads as follows:

> "Acceptance of the Terms of Enabling Act. Be It Ordained by the Constitutional Convention for the proposed State of Oklahoma, that said Constitutional Convention do, by this ordinance irrevocable, accept the terms and conditions of an Act of the Congress of the the United States, entitled, 'An Act to Enable the People of Oklahoma and the Indian Territory to form a Constitution and State Government and be admitted into the Union on an equal footing with the original states; and to Enable the People of New Mexico and of Arizona to form a Constitution and State Government and be admitted into the Union on an equal footing with the original states,' approved June the sixteenth, Anno Domini, Nineteen Hundred and Six."

THAT so the people of Oklahoma became bound by the Enabling Act and the Constitution of said State to accept the Constitution of the United States (and the Declaration of Independence with its Indictment of the English King for taxing the colonists without representation) as a part and parcel of the philosophy of its government and to in no manner contradict the same.

In his Appendix I the Attorney General attaches the Final Judgment of the Court from which this appeal is attempted and on its page 12 this appears:

> "This brings us to the form of relief which is to be afforded, or more specifically, the form of Order for the remedy. While, as we have seen, the equal protection clause of the Fourteenth Amendment is content with fundamental fairness in the exercise of voting rights, *if apportionment is to be our lot, we should not stop short of the ideal.* Of all the plans for reapportionment which have been urged upon us, as an appropriate remedy, we have been favored with a formula which approaches the ideal, to reapportion the Legislature 'as near as may be' to the equal number of inhabitants' of each district. This plan, known in the proof here as Model C, is submitted by the Bureau of Government Research, of the University of Oklahoma. It represents the judgment of the *Acting Attorney General* of the State, when this matter was previously under consideration for appropriate remedy. It is an embodiment of the best thinking and contribution of the political scientists and statisticians, who have testified in this case, concerning the critical question of discrimination. We adopted it as our guideline in our August 3rd Order. When State Question No. 408, Initiative Petition No. 271, providing for a Commission to reapportion the Legislature, was declared to have

passed, by proclamation of the Governor, the *de facto* Commission, created thereunder, adopted the Model as affording the most effective plan for reapportioning the Legislature, in accordance with the Oklahoma Constitution and the guidelines of our August 3, 1962 Order. We now adopt it as the pattern for Final Judgment of this Court, and in accordance with the following Order of Reapportionment."

Since his predecessor in office has persuaded the Court to its conclusion, it is the height of inconsistency approaching the intolerable for the Attorney General to now assail the Judgment.

It seems to me that this recitation of fact and law should accomplish a dismissal of the appeal.

Very respectfully,

SID WHITE
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Oklahoma City, Oklahoma

Attorney for Appellee

October, 1963.

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In the

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

No. 476

COWBOY PINK WILLIAMS, State Treasurer, State of Oklahoma; A. F. SHAW, State Auditor, State of Oklahoma; J. D. DUNN, LAWTON LEININGER and MIKE CONNERS, comprising the Oklahoma Tax Commission, State of Oklahoma; and HASKELL PUGH, MATHER M. EAKES and FRANK RENEAU, comprising the State Election Board, State of Oklahoma,

Appellants,

VERSUS

HARRY R. MOSS, ET AL.,

Appellees.

MOTION TO DISMISS

NORMAN E. REYNOLDS, JR.,
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Appellee;
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October, 1963.

UTTERBACK TYPESETTING CO., 13 SO. WALKER, OKLAHOMA CITY, PH. CE 9-8750

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Appendix I:

Answer of Defendants, State Auditor, and Members of the Oklahoma Tax Commission i

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In the
Supreme Court of the United States
OCTOBER TERM, 1963

No. 476

COWBOY PINK WILLIAMS, State Treasurer, State of Oklahoma; A. F. SHAW, State Auditor, State of Oklahoma; J. D. DUNN, LAWTON LEININGER and MIKE CONNERS, comprising the Oklahoma Tax Commission, State of Oklahoma; and HASKELL PUGH, MATHER M. EAKES and FRANK RENEAU, comprising the State Election Board, State of Oklahoma,

Appellants,

VERSUS

HARRY R. MOSS, ET AL.,
Appellees.

MOTION TO DISMISS

OBJECT

This Motion to Dismiss is directed to the appeal of the State Treasurer, State Auditor, Oklahoma Tax Commission and State Election Board of Oklahoma filed in their behalf by the Attorney General of Oklahoma. Their Jurisdictional Statement was filed on September 18, 1963.

The judgment appealed from by these state officials was not adverse to them and they are not aggrieved parties.

FACTS

This action was instituted in the United States District Court for the Western District of Oklahoma on January 31, 1961. No material action was taken pending the ruling in *Baker* v. *Carr*, decided March 26, 1962.

Thereafter a hearing on April 23, 1962, resulted in a 2-1 decision denying immediate injunctive relief which would have affected the then pending primary elections and the composition of the 1963 Legislature. The State Auditor, the State Treasurer, the Oklahoma Tax Commission and the State Election Board were all parties to this action at that time and have remained parties since.

The Appellants filed answers which are set forth in the appendix hereto.

In their answers both the State Election Board and the State Treasurer admitted the court had jurisdiction, that the Oklahoma Legislature is malapportioned in violation of the Constitution of the United States, that there is no rational basis to present apportionment statutes and that they result in invidious discrimination. The Treasurer prayed the court to reapportion and the State Election Board admitted the allegations of the complaint and prayed entry of "judgment and order as is just and equitable under the circumstances, which judgment and order these defendants shall abide."

The other two appellants, the State Auditor and State Tax Commission admitted the court's jurisdiction but merely denied the plaintiff was entitled to relief as against them since their pertinent functions "are purely ministerial, and are not affected by the fact the legislature of Oklahoma may not be" apportioned correctly.

Thereafter on June 12 further hearing was held and the court's ruling was reported at 207 F. Supp. 898.

Again on July 2nd, July 31st and August 1st, further hearings were held and the last is reported at 207 F. Supp. 898.

On July 30, 1962, three of these four appellants (all except the Election Board) pleaded for the relief granted when the State Treasurer through his counsel and the Acting Attorney General (who was attorney for the Tax Commission and State Auditor) filed a Joint Statement wherein they asked adoption of the plan of apportionment ultimately adopted by the court and said in part:

> "That they believe said formula is based upon a proper interpretation of such portions of the Oklahoma Constitution and statutes as are not in violation of the Constitution of the United States of America and that said formula provides fair and equitable representation, insofar as is reasonably practical, to all citizens of Oklahoma.
>
> "WHEREFORE they pray that said formula be adopted in any decree of Legislative reapportionment which this Court may make."

Prior to a hearing on January 15, 1963, the officials holding the offices of State Treasurer, State Auditor and Attorney General were replaced by their duly elected successors in office, the Treasurer and Auditor being unable to succeed themselves under the law and the Attorney General not having stood for re-election.

The new Attorney General stated at the beginning of the January 15, 1963 hearing, "please enter the appearance of Charles Nesbitt, Attorney General of Oklahoma, and Mr.

Fred Hansen, Assistant Attorney General, who is with me. Mr. Hansen has participated in the proceedings previously, and will continue to do so." Mr. Hansen had been the acting Attorney General prior thereto. Shortly thereafter but prior to the hearing of March 8, 1963, the members of the State Election Board were changed.

No amended pleadings were filed by any of these successors in offices. In open court it was represented that they would not change the record.

In response to a series of questions by Judge Murrah and Judge Rizley as to the position of the four Appellants at the start of the March 8, 1963 hearing, the record discloses the following answer of the Attorney General:

> "Mr. Nesbitt: They do not wish to take any action in (or) attempt to undo anything that's transpired in the earlier proceedings in the case."

The three-judge court entered its judgment on July 17, 1963. This Memorandum of Decision and Final Judgment sets forth the appearances and the substitution of parties Appellants' Appendix, p. i).

The court's order was directed against only the "Election Board of the State of Oklahoma, and all those acting by and under its authority." The Election Board of the State of Oklahoma was ordered to hold elections in accordance with a plan of apportionment proffered by the Attorney General of Oklahoma in a Proposed Order and Decree filed on July 30, 1962 (Appellant's Appendix, pp.xvi and xix).

In none of their pleadings do any of these Appellants raise any of the "Questions Presented by the Appeal" as stated on pages 7 and 8 of their Jurisdictional Statement.

Finally the three-judge court found the Oklahoma Constitution a proper, rational and therefore constitutional means of apportionment except for one clause.

The court found that a constitutional amendment approved by a large majority and proclaimed adopted by the Governor had established a *de facto* Legislative Apportionment Commission which had proceeded to apportion in almost the identical language subsequently adopted by the court. Unfortunately this amendment was declared to have failed of adoption by the State Supreme Court at the insistence of certain intervenors below or the Federal Court would never have had to issue its order herein (Appellant's Appendix, p. iv).

LEGAL REASONS FOR DISMISSAL

The legal question involved in this motion is whether a party may appeal from a judgment which he has urged the court to enter or which is in his favor.

The following cases sustain the proposition that a party may not appeal from a judgment or decree in his favor:

Lindheimer, et al. v. *Illinois Bell Telephone Co.*, 292 U.S. 151, 54 S.Ct. 658 (1934); *New York Telephone Co.* v. *Maltbie, et al.*, 291 U.S. 645, 54 S.Ct. 443 (1934); *Electrical Fillings Corporation, et al.* v. *Thomas & Betts Co., et al.*, 307 U.S. 241, 59 S.Ct. 860 (1939); and *Public Service Commission of Missouri, et al.* v. *Brashear Freight Lines, Inc., et al.*, 306 U.S. 204, 59 S.Ct. 480 (1939).

See also 69 A.L.R.2d 701 on: *Right of winning party to appeal from judgment granting him full relief sought.*

Where the relief prayed for by a party is granted he may not appeal from the judgment.

Mugford v. *Mayor and City Council*, Md., 44 A.2d 745, 162 A.L.R. 1101 (1946).

CONCLUSION

How could these four Appellants make clearer their desire that the court below apportion in exactly the manner it did! Having done so, how can they now be heard to complain to the Supreme Court of the United States?

As a matter of fact there is no judgment or order affecting in any manner the rights, either personal or official, of the State Treasurer, State Auditor or State Tax Commission.

The record is clear! The court below expressly enforced the Oklahoma Constitution with the exception of the removal of the seven limit clause on the number of representatives any County could have as being in derogation of the Fourteenth Amendment. The removal of the seven limit clause was advocated by the Attorney General for this reason. The court's order was in effect enforcement of the action of a *de facto* Legislative Apportionment Commission established by a majority of the voters and proclaimed by the Governor as proper. It was the interpretation of the Oklahoma Constitution made by the Oklahoma Attorney General. Thus it is based on ample state authority and action!

Let this fight be fought and financed by those who did not seek to lead the three-judge court to act in the very manner it has acted. The money collected from Oklahoma

taxpayers should not be expended to impede and defeat their right to constitutional representation.

There are two other timely Notices of Appeal pending. To deny this appeal is not necessarily to eliminate the ultimate right of this Court to review the decision in Oklahoma. It is to merely sustain the hallowed appellate precept that an issue cannot first be raised on appeal by appellants that is contrary to their urging on the court below. Denial of this appeal would eliminate further use of state finances and state officials in the fight to thwart the State Constitution. If there are proper parties to appeal, let them come forward with proper issues.

WHEREFORE, the undersigned appellees pray that the appeal filed in the name of the State Treasurer, State Auditor, State Election Board and State Tax Commission of Oklahoma, be dismissed.

Respectfully submitted,

NORMAN E. REYNOLDS, JR.,
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Appellee;

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Attorneys for Council of Democratic Neighborhood Clubs, Appellee.

Of Counsel:
G. D. SPRADLIN,
4921 North Lincoln,
Oklahoma City 5, Oklahoma,

October, 1963.

APPENDIX

APPENDIX I.

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

Harry R. Moss, Plaintiff,	)	
vs.	)	
William A. Burkhart, State Treasurer; Andy Anderson, State Auditor; and J. D. Dunn, Lawton Leininger and Mike Conners, composing the Oklahoma Tax Commission of the State of Oklahoma, Defendants.	)	No. 9130

ANSWER OF THE DEFENDANTS STATE AUDITOR AND MEMBERS OF THE OKLAHOMA TAX COMMISSION

Come now the defendants, Andy Anderson, State Auditor, and J. D. Dunn, Lawton Leininger and Mike Conners, composing the Oklahoma Tax Commission, and, with the permission of the court, withdraw the "Motion to Dismiss" filed thereby in the above cause in January 1961, and in lieu thereof, file the following answer.

In answer to plaintiff's complaint and pertinent amendments thereof, the above defendants, and each of them, allege and state:

1. Defendants admit that this court has jurisdiction in this action.

2. Defendants deny that plaintiff is entitled to the relief prayed for against them in his complaint and pertinent amendments thereof, and in this connection allege that defendants' functions and duties, insofar as this case

is concerned, are purely ministerial, and are not affected by the fact that the legislature of Oklahoma may not be, as alleged by plaintiff, apportioned in the manner prescribed by Sections 9 to 16, Article 5, of the Oklahoma Constitution.

MAC Q. WILLIAMSON
Attorney General of Oklahoma
FRED HANSEN
First Assistant Attorney General
ATTORNEYS FOR THE DEFENDANT
Andy Anderson, State Auditor

ALBERT D. LYNN
E. J. ARMSTRONG
ATTORNEYS FOR OKLAHOMA
TAX COMMISSION

June 2, 1962

APPENDIX II.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF OKLAHOMA

HARRY R. MOSS, Plaintiff, vs. WILLIAM A. BURKHART, STATE TREASURER; ANDY ANDERSON, STATE AUDITOR; J. D. DUNN, LAWTON LEININGER AND MIKE CONNERS, COMPOSING THE OKLAHOMA TAX COMMISSION OF THE STATE OF OKLAHOMA; CLEE FITZGERALD, CHAIRMAN, HERBERT F. HEWETT, VICE-CHAIRMAN, AND LOUIE R. GEISER, SECRETARY, MEMBERS OF THE STATE ELECTION BOARD OF THE STATE OF OKLAHOMA; J. HOWARD EDMONDSON, GOVERNOR OF THE STATE OF OKLAHOMA, Defendants, and H. A. PRICE, JOHN M. RASBERRY, J. B. HUTCHENS AND ROY GRIMES, DIRECTORS OF OKLAHOMANS FOR LOCAL GOVERNMENT, AN UNINCORPORATED ASSOCIATION, Intervenors.	No. 9130 Civil

ANSWER OF THE DEFENDANT, THE STATE ELECTION BOARD, CLEE FITZGERALD, CHAIRMAN, HERBERT F. HEWETT, VICE CHAIRMAN, LOUIE R. GEISER, SECRETARY

Come now the defendants, Clee Fitzgerald, Herbert F. Hewett and Louie R. Geiser, constituting the State Election Board of the State of Oklahoma, and for their Answer to the complaint herein state:

1. They admit the jurisdiction of the Court.

2. They admit the plaintiff is a proper party to bring this action.

3. They admit the allegations of the complaint.

4. They state that existing legislative apportionment laws in Oklahoma violate the Constitution of the State of Oklahoma and create invidiously discriminatory mal-apportionment in violation of the Fourteenth Amendment to the Constitution of the United States of America.

WHEREFORE having fully answered, these defendants pray that this Court enter such judgment and order as is just and equitable under the circumstances, which judgment and order these defendants shall abide.

s/ John E. Wagner
John E. Wagner

s/ Robert W. Blackstock
Robert W. Blackstock

ATTORNEYS FOR THE DEFENDANTS, THE STATE ELECTION BOARD OF THE STATE OF OKLAHOMA, CLEE FITZGERALD, CHAIRMAN, HERBERT F. HEWETT, VICE CHAIRMAN, LOUIE R. GEISER, SECRETARY

APPENDIX III.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF OKLAHOMA

HARRY R. MOSS, Plaintiff, vs. WILLIAM A. BURKHART, STATE TREASURER; ANDY ANDERSON, STATE AUDITOR; J. D. DUNN, LAWTON LEININGER AND MIKE CONNERS, COMPOSING THE OKLAHOMA TAX COMMISSION OF THE STATE OF OKLAHOMA; CLEE FITZGERALD, CHAIRMAN, HERBERT F. HEWETT, VICE-CHAIRMAN, AND LOUIE R. GEISER, SECRETARY, MEMBERS OF THE STATE ELECTION BOARD OF THE STATE OF OKLAHOMA; J. HOWARD EDMONDSON, GOVERNOR OF THE STATE OF OKLAHOMA, Defendants, and H. A. PRICE, JOHN M. RASBERRY, J. B. HUTCHENS AND ROY GRIMES, DIRECTORS OF OKLAHOMANS FOR LOCAL GOVERNMENT, AN UNINCORPORATED ASSOCIATION, Intervenors.	)	No. 9130 Civil

ANSWER

Comes now William A. Burkhart, State Treasurer for the State of Oklahoma, and for his answer to the Complaint, as supplemented, admits that this Court has jurisdiction in this cause, admits that the State Legislature of Oklahoma is mal-apportioned in violation of the Constitution of the United States; admits that the present apportionment of both houses of the Legislature has no rational basis and results in invidious discrimination between citi-

zens of Oklahoma; and concedes that this Court has the jurisdiction to enter appropriate orders to correct such invidious discrimination.

This defendant denies, however, that the mal-apportionment of the Legislature in any manner affects the validity of laws enacted and signed by the Governor, such Legislature being de facto and being the only legislative body empowered to carry on the affairs of state.

WHEREFORE, this defendant prays that the Complaint of the plaintiff be denied insofar as it seeks injunctive relief against this defendant, restraining him from paying valid state warrants, and further prays that the Court enter such appropriate orders as will effect a reapportionment of the Legislature in such a manner that it will not be in violation of the Fourteenth Amendment of the Constitution of the United States.

WILLIAM A. BURKHART, State Treasurer
of the State of Oklahoma

By s/ Delmer L. Stagner
STAGNER, ALPERN & POWERS

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In the

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

No. 476

COWBOY PINK WILLIAMS, State Treasurer, State of Oklahoma; A. F. SHAW, State Auditor, State of Oklahoma; J. D. DUNN, LAWTON LEININGER and MIKE CONNERS, comprising the Oklahoma Tax Commission, State of Oklahoma; and HASKELL PUGH, MATHER M. EAKES and FRANK RENEAU, comprising the State Election Board, State of Oklahoma,

Appellants,

VERSUS

HARRY R. MOSS,
Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

RESPONSE OF APPELLANTS TO MOTIONS TO DISMISS

CHARLES NESBITT
Attorney General of Oklahoma
State Capitol
Oklahoma City, Oklahoma

Counsel for Appellants

November, 1963

UTTERBACK TYPESETTING CO., 13 SO. WALKER, OKLAHOMA CITY, PH. CE 8-8780

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In the

Supreme Court of the United States

OCTOBER TERM, 1963

No. 476

COWBOY PINK WILLIAMS, State Treasurer, State of Oklahoma; A. F. SHAW, State Auditor, State of Oklahoma; J. D. DUNN, LAWTON LEININGER and MIKE CONNERS, comprising the Oklahoma Tax Commission, State of Oklahoma; and HASKELL PUGH, MATHER M. EAKES and FRANK RENEAU, comprising the State Election Board, State of Oklahoma,

Appellants,

VERSUS

HARRY R. MOSS,
Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

RESPONSE OF APPELLANTS TO MOTIONS TO DISMISS

Two separate Motions to Dismiss have been filed in this cause. In substance, they are identical. This response is directed to both Motions, and the parties so moving will be referred to jointly as Appellees.

Appellees do not deny jurisdiction of this Court over this appeal. They do not deny that the questions are sub-

stantial. The only ground for dismissal advanced by Appellees is that the State of Oklahoma has somehow "confessed" that the constitutional and statutory provisions of Oklahoma relating to legislative apportionment violate the XIV Amendment to the United States Constitution; and hence, Appellants, state officials named defendants in the cause, lack standing to prosecute this appeal.

The argument is pure sophistry. It wholly ignores the issues here for decision, and the manner in which those issues arose in the District Court.

It should be noted that the (former) Attorney General of Oklahoma made no "confession" in pleadings, that any portion of the Constitution of Oklahoma, or its laws, contravened the United States Constitution.[1] Any such allegations were by private counsel appearing for former state officials.[2] Later developments in the cause rendered immaterial any question of their authority to make such a confession.

At the outset of this proceeding, all parties tacitly agreed that statutes then existing for apportionment of both houses of the Oklahoma Legislature did not comply with the *Oklahoma* Constitution. The District Court ultimately held that the same laws violated the United States Constitution as well.

After numerous hearings, the District Court entered a series of interlocutory decrees, the effect of which was to

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[1] Appendix to Motion to Dismiss of Council of Democratic Neighborhood Clubs, pp. i-ii.

[2] *Ibid.*, pp. iii-vi.

invalidate all reapportionment laws then existing, and certain provisions of the Oklahoma Constitution relating to legislative apportionment. *Moss* v. *Burkhart*, 207 F. Supp. 885, at 897, 898-899. This ruling was and had to be founded upon the Equal Protection Clause of Amendment XIV, United States Constitution. The ultimate decision at that stage, however, was to withhold final judgment to permit the 29th (1963) Oklahoma Legislature to enact new reapportionment laws under guide lines which the District Court suggested would meet required standards of Equal Protection of Laws, 207 F. Supp. at 898. A series of appeals from these orders were dismissed in this Court, apparently for the reason that they were premature.

When proceedings in the District Court resumed on March 8, 1963, the issues, as well as the parties, had altered considerably. The 29th Legislature had enacted S.J.R. No. 8 and H.B. No. 586, for apportionment, respectively, of the State Senate and House of Representatives of Oklahoma. These acts were submitted to the Court as an apportionment accomplished by the State through its Legislature, which acts comply both with the provisions of the Oklahoma Constitution, and with required standards of Equal Protection of Laws. Thereafter, the District Court assumed the 1963 laws complied with the Oklahoma Constitution. From that point onward, the principal issue before the District Court was whether either or both of these newly enacted reapportionment laws necessarily resulted in "invidious discrimination" in voting strength among legislative representative districts, and thus denied Oklahoma citizens

Equal Protection of Laws guaranteed by the XIV Amendment, United States Constitution.

The District Court noted that the 1963 apportionment laws were not yet effective, for want of an emergency clause, and might never become so, if subjected to referendum prior to their effective date of September 12, 1963. It happened, however, that no referendum petition was filed; and S.J.R. 8 and H.B. 586, if they are constitutional, are now the law of Oklahoma governing apportionment of its Legislature.

Necessarily, the District Court determined these legislative Acts to be invidiously discriminatory, if and when they should become law.[3] Otherwise, any judicial reapportionment necessarily would have been superseded by those laws, if they remained unchallenged on September 12, 1963.

Thus, the ultimate issues upon this appeal are these: If the 1963 legislative apportionment acts (S.J.R. 8 and H.B. 586) meet required standards of Equal Protection under the XIV Amendment to the United States Constitution, the Final Decree of the District Court entered July 17, 1963, is wrong, and must be reversed. On the other hand, if those acts fail, in whole or in part, to afford Equal Protection of Laws to Oklahoma citizens, the further question arises, whether, and to what extent, the Federal Courts may properly impose and enforce a judicially fashioned reapportionment upon the State.

Nobody in authority has confessed judgment against the State of Oklahoma upon either of these issues. The questions outlined in the Notice of Appeal and in the Juris-

[3] Appendix to Jurisdictional Statement, pp. iv-ix.

dictional Statement constitute the particular legal questions which will be determinative of these ultimate issues.

CONCLUSION

The State of Oklahoma will and must defend its Constitution against any claim that provisions thereof contravene the XIV Amendment to the United States Constitution. Appellants, as state officials concerned, and the Attorney General as their counsel, cannot do otherwise in performance of their official duties. Likewise, the State must defend the reapportionment laws enacted by the Oklahoma Legislature where there exists any reasonable theory upon which the constitutionality thereof can be upheld.

The final decree of the District Court invalidating these portions of the Constitution and Laws of Oklahoma necessarily has aggrieved the State, and Appellants as state officials against whom the action was brought. Appellants are the proper parties to perfect this appeal, designed to test the correctness of the final judgment entered by the District Court.

The Motions to Dismiss are without substance. Appellants respectfully suggest that the motions should be denied, that probable jurisdiction should be noted, and the cause stand for argument on the merits.

CHARLES NESBITT
Attorney General of Oklahoma
State Capitol
Oklahoma City, Oklahoma

Counsel for Appellants

November, 1963

CERTIFICATE OF SERVICE

CHARLES NESBITT, Attorney General of Oklahoma, counsel for Defendants-Appellants named in the Response to Motions to Dismiss to which this certificate is attached, and a member of the Bar of the Supreme Court of the United States, do hereby certify that on ..... day of November, 1963, I served copies of the foreging Response to Motions to Dismiss on the several parties to this action by mailing copies in duly addressed envelopes, with first-class postage prepaid thereon, to their respective counsel of record, as follows:

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Walt Allen, et al., Intervening State Senators and Oklahomans for Local Government	Leon Hirsh James C. Harkin and Paul Johanning 414 Oklahoma Nat. Bldg. Oklahoma City, Oklahoma

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